OUR INCOMPETENT GOVERNMENT
RICHARD A. POSNER

FITZGERALD'S LAME INDICTMENT
JEFFREY ROSEN

THE NEW REPUBLIC

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anklin Foer

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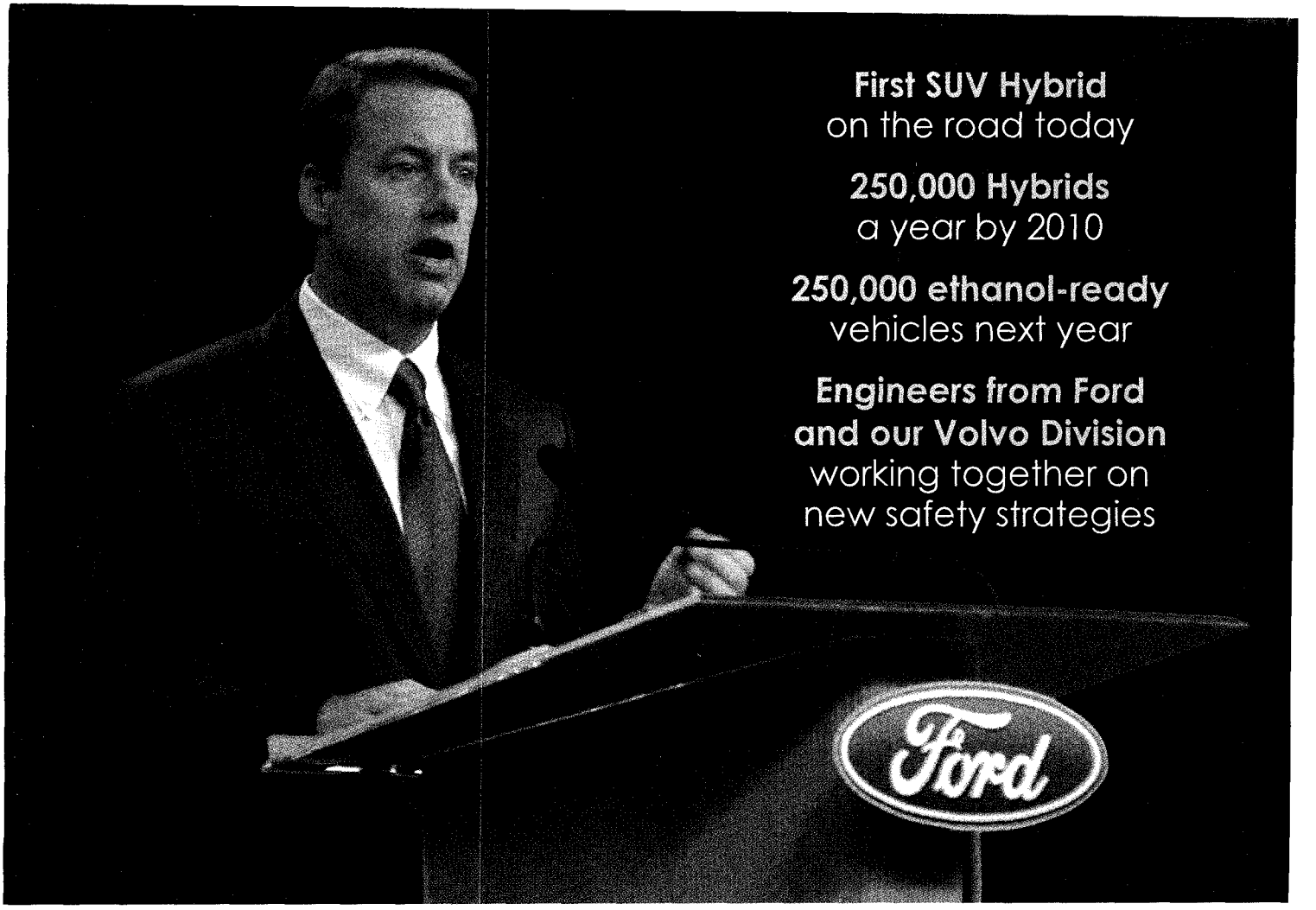

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A JOURNAL OF POLITICS AND THE ARTS

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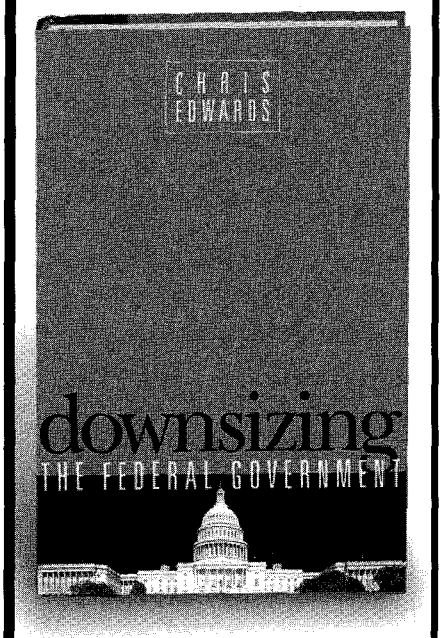
"...Utopian, but only to those who are blind to the dystopia that looms."

— **James M. Buchanan,**
Nobel Laureate



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HEALTH FOOD FOR THOUGHT

ROBERT A. BERENSON'S MEDICAL malpractice analysis is strong, and his personal stories of error and physician accountability are similar to many that I have heard from doctors in Washington state ("Malpractice Makes Perfect," October 10). Unfortunately, as Berenson argues, the proposed treatments that have passed the House and are supported by the president are more placebo than panacea and have dangerous side effects.

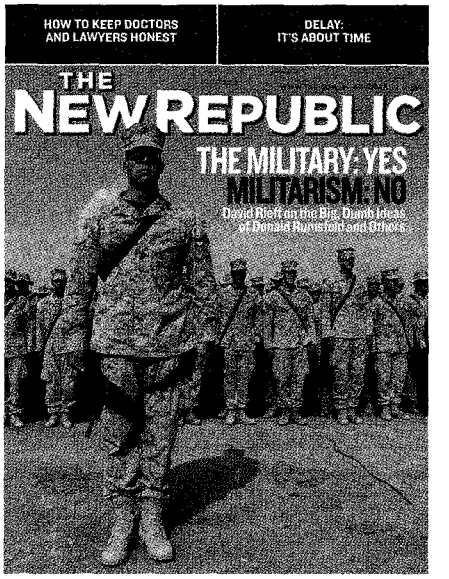
What is needed is not a simplistic nostrum from 1975, but rather a comprehensive approach that reflects the full realities of the problem in 2005 and will actually reduce insurance premiums and medical errors, protect patient rights, hold doctors accountable, and improve the quality of health care. These goals are achievable if Congress and the administration stop putting partisanship and special interests over sound policy and the public interest.

This year, I introduced the Comprehensive Medical Malpractice Reform Act of 2005, a bill that provides a common-sense compromise to the debate and allows doctors to apologize under a mediation agreement between both patient and doctor. But the Republican majority refuses a hearing on my bill and, instead, repeatedly introduces its same flawed bill, allowing no amendments to improve it. Clearly, their key interest is in political gain, not sound policy.

BRIAN BAIRD
Member of Congress
Washington, D.C.

THE DIVINE MISS P

WITH REGARD TO ALAN WOLFE'S review of my book, *Phyllis Schlafly and Grassroots Conservatism: A Woman's Crusade*, it might be noted that the book's intention is to discuss both the mindset and political achievements of the right in transforming American politics and the failure of the left in the past generation ("Mrs. America," October 3). This work is based on extensive research in Schlafly's papers, as well as in other archival collections, including those of her opponents. The book places conservative activist women within what I describe as moral republicanism, which drew from a Protestant Christian tradition and from eighteenth-century republican political thought. As a result, traditional-minded Catholics, Mormons, and Jews joined with evangelical Christians in a campaign that derived from a powerful Protestant tradition that had been exclusionary. Wolfe refuses to consider the book's argument judiciously. Instead, he offers caricature. The book is not intended to be didactic history, but offers lessons for both the right and left. One problem facing the left today is an


HOW TO KEEP DOCTORS AND LAWYERS HONEST
DELAY: IT'S ABOUT TIME
THE NEW REPUBLIC
THE MILITARY: YES
MILITARISM: NO
David Rieff on the Big, Dumb Ideas of Donald Rumsfeld and Others

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inability to comprehend how others construct alternative worldviews and act on those views. Wild anger is not the starting point for comprehension.

DONALD T. CRITCHLOW
***Editor,* JOURNAL OF POLICY HISTORY**
St. Louis, Missouri

WOLFE MAY NOT HAVE GRASPED the full implications of what he was saying when he wrote, "In 1952, [Schlafly] ran for Congress, urging huge increases in defense spending and aggressive actions in Korea, all the while opposing a draft and calling for a smaller government. Her positions could be so incoherent because no one believed that she would win." Obviously, today, incoherence is no barrier to victory.

JERRY LEVIN
Baltimore, Maryland

LAW OF GRAVITY

NOAM SCHEIBER'S ARTICLE ON alleged conservative elitism criticizes opponents of the Harriet Miers nomination for "Eastern seaboard" elitism in their wish to limit nominees to intellectuals from "the top 20 law schools" ("Merit Scholars," October 17). These opponents would have been thrilled if the president had nominated Maura Corrigan (University of Detroit Mercy School of Law), Edith Clement (Tulane Law School), Priscilla Owen (Baylor Law School), or Karen Williams (University of South Carolina School of Law). None of these candidates attended a "top 20" law school, and none is the kind of "Eastern seaboard" intellectual from the Ivy League that Scheiber seems to think conservative "pundits and wonks" would require for the Supreme Court.

MICHAEL HERTZBERG
New York, New York

GOT NUMBERS GAME

NOAM SCHEIBER MAKES THE OFF-hand, casual recommendation that Democrats prove their bona fides in the war on terrorism by endorsing a plan to attack Iranian or North Korean nuclear plants if necessary ("Bargain Hunting," October 24). This is blood-chillingly irresponsible. Bombing North Korea might well provoke a response that could destroy Seoul or Tokyo. Bombing the nuclear sites of Iran, some of which are presumed to be located near large and ancient cities like Isfahan, could cause huge civilian casualties; destroy works of art and architecture of immeasurable artistic and historic value; and unite the population of Iran behind its government and thus destroy any chance of internal reform.

ERNEST DAVIS
New York, New York

BILL GALSTON AND ELAINE Kamarck's analysis—cited in Scheiber's TRB—makes the Democrats' situation appear more dire than it actually is. Although self-identified conservatives outnumber self-identified liberals by about a three-to-two ratio, self-identified moderates make up at least as large a segment of the U.S. electorate as conservatives do, and these moderates are closer to liberals than to conservatives on a wide range of issues. For example, according to the 2004 national exit poll, 62 percent of moderates wanted to keep abortion legal in all or most cases, as did 81 percent of liberals but only 33 percent of conservatives. Similarly, only 31 percent of moderates and 13 percent of liberals—compared with 71 percent of conservatives—felt that Bush's tax cuts had been good for the nation. Fifty-three percent of moderates disapproved of the decision to go to war with Iraq, as did 77 percent of liberals but only 19 percent of conservatives. John Kerry won 54 percent of the vote among self-identified moderates. Given the growing level of public discontent with the Bush administration and the Republican Congress, the next Democratic presidential candidate should have an excellent chance of improving on Kerry's performance.

ALAN I. ABRAMOWITZ
Professor of Political Science
Emory University
Atlanta, Georgia

NOAM SCHEIBER RESPONDS:
Ernest Davis makes a leap I never made in my piece. The point is not to bomb Iranian or North Korean nuclear facilities. The point is to have a plan to do so in the event that we must—and, more broadly, to reassure the public that we've accounted for every foreseeable contingency. The Democrats' refusal to ponder lousy but potentially necessary foreign policy options partly explains their low credibility on national security issues. ■

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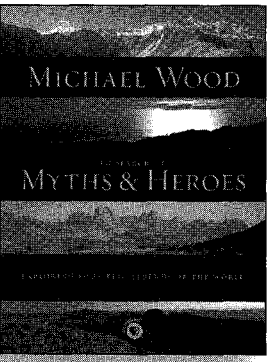

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TRB
FROM WASHINGTON

IN 1994, THE EMINENT EVANGELICAL historian Mark Noll wrote a scorching polemic about his own religion called *The Scandal of the Evangelical Mind*. The book lamented the "intellectual disaster of fundamentalism" and its toll on evangelical political and theological thought. All around him, Noll saw "a weakness for treating the verses of the Bible as pieces in a jigsaw puzzle that needed only to be sorted and then fit together to possess a finished picture of divine truth."

While many evangelicals reacted angrily to Noll's description, they tacitly acknowledged his argument with their actions. Evangelicals began aggressively reaching out to Catholics for intellectual aid. That movement reached its apotheosis with the nomination of Samuel Alito to the Supreme Court. With his addition to the ranks of Antonin Scalia, Anthony Kennedy, Clarence Thomas, and John Roberts, all five members of the Court's conservative majority would be Catholics.

This unprecedented Catholic majority, assuming Alito's confirmation, might seem a historical accident. When George H.W. Bush appointed Thomas, it's a good bet that his Catholicism wasn't foremost on the president's mind. But the emergence of the Court's Catholic bloc reflects the reality of social conservatism: Evangelicals supply the political energy, Catholics the intellectual heft.

For much of U.S. history, this alliance would have been unthinkable. Protestants once fought hard to teach the King James Bible in public schools, insisting that every schoolchild consume its subtle description of the Pope as "that man of sin." But shared animus toward abortion provided the initial grounds for rapprochement. And, at about the same time Noll's book appeared, Catholic-evangelical cooperation began transcending any single issue. In 1994, the influential Catholic journal *First Things* published a manifesto called "Evangelicals & Catholics Together." Its signatories—including Richard John Neuhaus, Pat Robertson, and Bill Bright, founder of the Campus Crusade for Christ—vowed, "[W]e will do all in our power to resist proposals for euthanasia, eugenics, and population control that ... betray the moral truths of our constitutional order."

As an exercise in political coalition-building, this alliance made perfect sense. But evangelicals didn't just need Catholic bodies; they needed Catholic minds to supply them with rhetoric that relied more heavily on morality than biblical quotation. You could see the partnership in countless examples. After James Dobson's Focus on the Family funded a Colorado initiative permitting discrimination against gays, Catholic law professors Robert George and John Finnis testified for the measure in court. Evangelical politicians began borrowing John Paul II's "culture of life" critique of abortion—a phrase that they also deployed during the Terri Schiavo controversy. Indeed, Catholic conservatism provided much of the case for keeping Schiavo alive, from Tom DeLay's invocation of natural law to the oft-cited warnings about a slippery slope to eugenics.

There's no clearer example of evangelicals dressing themselves in Catholicism than George W. Bush's 2000 campaign. His speeches were rife with talk of "solidarity" and "common good," the language of the social teachings. And the authors of Bush's Faith Based Initiative—the hallmark of his feint toward compassionate conservatism—traced the program to papal encyclicals. Marvin Olasky, the original face of the Bush program, once credited Catholicism with "provid[ing] a structural framework." And, in the end, the campaign was an object lesson in the new alliance. By defending his positions on abortion with phrases drawn from Catholics—"expand the circle of freedom" and "protect the weakest member of society"—Bush simultaneously reassured the hard right and avoided the impression of a Bible-thumping radical.

That's not to say that scandal of the evangelical mind inevitably leads Republican presidents to appoint Catholics. But sociological and political factors have combined with the intellectual to ensure that Catholic lawyers continually dominate the pool of Republican candidates for the bench. For starters, there are so many of them. During the early twentieth century, law provided Catholics with an important vehicle for traveling into the middle class. While Catholics couldn't enter top law schools, they could attend places like Fordham and Villanova. "There was a vast culture of Catholic DAs, lawyers, and judges," says John McGreevy, the author of *Catholicism and American Freedom*. Even when discrimination against Catholics faded, the law's prestige among white Catholics persisted. After the cultural tumult of the 1960s, and with the rise of the abortion issue, many of these Catholic lawyers wended their way into the arms of conservatism. (Evangelicals have only recently begun to attend elite schools in great numbers and have just begun reinvesting in institutions capable of producing top-shelf intellectuals.)

Then there's the obvious political appeal of tapping Catholics. By nominating a small army of Scalitos, Republicans clearly hope to ply more Catholics from their attachment to the New Deal coalition—a prime GOP project since the days of Richard Nixon's "silent majority." These appointments could also effect a broader change in Catholicism's approach to government. At the same time Catholic conservatives joined the evangelicals in battle, they have simultaneously waged a war against their co-religionists in an attempt to alter the Church's traditional preference for a strong state—a preference that led Catholics en masse to FDR's party and yielded a generation of Democratic politicians (see the Kennedys and Tip O'Neill). Led by Neuhaus and the American Enterprise Institute's Michael Novak, these conservatives want to realign papal teaching with support for an unrestrained market. As Neuhaus, the editor of *First Things*, has put it, "Capitalism is the economic corollary of the Christian understanding of man's nature and destiny."

Of course, this requires some impressive intellectual gymnastics, since the last Pope and many of his predecessors were potent critics of capitalism. But, by naming five Catholic economic libertarians to the high Court, Republican presidents have unwittingly provided prestige and powerful spokesmen to the conservatism espoused by the likes of Neuhaus and Novak. By helping resolve the scandal of the evangelical mind, they may have provoked a crisis of the Catholic one.

FRANKLIN FOER

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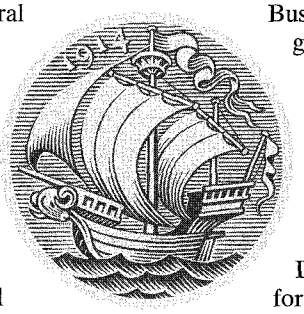
Broader Indictment

AT HIS PRESS conference last Friday, special counsel Patrick Fitzgerald was asked whether his indictment of I. Lewis "Scooter" Libby showed that "the administration took the country to war on false premises." "This indictment is not about the war," Fitzgerald responded. "This is simply an indictment that says . . . in the context of a very heated debate over the war, whether some person—a person, Mr. Libby—lied or not." In the narrowest sense, that may be true. But this indictment has everything to do with the war: It shows how administration officials—particularly Libby and his boss, Dick Cheney—interfered with the public's understanding of a key bit of intelligence, and how they tried to conceal that interference. Which raises one of the greatest outstanding questions about the war: To what extent did the Bush administration manipulate the public?

Libby authored many of Cheney's most incendiary prewar lines and urged them upon other officials, including Secretary of State Colin Powell. Cheney and Libby suggested that Saddam Hussein had conspired with Osama bin Laden to stage the September 11 attacks and that Saddam was building nuclear weapons. Of course, these claims—which constituted the primary (though not the only) rationale for the invasion—unraveled as soon as the war began. But what bothered Cheney and Libby was not simply the fact that their assertions had been wrong, but the growing speculation that they had known those assertions were wrong (or at least dubious) even as they made them.

In the late spring of 2003, several articles appeared, including a *New York Times* column by Nicholas Kristof and a NEW REPUBLIC article by John B. Judis and Spencer Ackerman ("The First Casualty," June 30), which charged that the administration had suppressed or ignored intelligence findings that contradicted its claims about Iraqi WMD and Saddam's ties to terrorists. As TNR reported, when, in the run-up to the war, the vice president's office didn't get the answers it wanted from the CIA, it demanded that analysts repeat their inquiry. If the results still didn't meet the expectations of Cheney and his aides, they would ignore them, while allowing the public to believe that their pronouncements were based on genuine intelligence findings.

The story of former Ambassador Joseph Wilson, recounted by Kristof and TNR, was integral to this charge against the administration. The CIA sent Wilson to Niger in February 2002 after Cheney's office asked whether Iraq had tried to buy uranium from that country; Wilson said he found no evidence that it had. In other words, well before George W. Bush uttered the infamous 16 words that suggested otherwise in his January 2003 State of the Union address, the administration had ample grounds to doubt nuclear trade between Iraq and Niger. It was later discovered that the White House had ignored not only Wilson's report, but also repeated objections from the CIA and the State Department.



As the indictment makes clear, the vice president's office began seeking to discredit Wilson soon after the TNR piece appeared, attempting to conceal Cheney's role in the controversy by suggesting that Wilson's wife had conceived and arranged the trip. But this awkward ploy backfired, resulting in the administration's belated acknowledgement in July 2003 that there probably was no Niger connection—and later in Fitzgerald's investigation. The administration subsequently blamed the CIA for the false claims. But, as Fitzgerald's indictment indicates, Cheney and Libby were not mad at the CIA because it misled them. They were mad because it wouldn't support their efforts to mislead the American public.

Fitzgerald was appointed special counsel to find out whether a crime had taken place, and, if so, to prosecute it. He does not have a mandate to report on how the administration made its case for war. But the American public deserves just that report. Democrats have demanded that Kansas Senator Pat Roberts, chairman of the Senate Intelligence Committee, make good on his promise to investigate how Bush officials used intelligence in the run-up to the war. But, judging from the Committee's initial report last year, which echoed the administration's line that the CIA was to blame for everything that went wrong, Democrats ought to push for an independent investigation. It should be chaired by former officials without outstanding political debts and staffed by policy experts—similar to the Tower Commission, which President Reagan appointed to investigate the Iran-Contra affair, or the 9/11 Commission. Because this is about more than whether "a person, Mr. Libby" lied or not; it's about whether an administration did. ■

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NOTEBOOK

SAVING MUSLIMS FROM DAMNATION . . . SAVING US FROM SQUIRREL MIGRATION

HACKS CONT'D

YOU MIGHT THINK THAT WITH Samuel Alito Jr.'s nomination to the Supreme Court following the withdrawal of the hapless Harriet Miers, President Bush has learned his lesson about the dangers of appointing hacks to high office. But, out of the limelight, the march of the hacks continues. Take Paul J. Bonicelli, who was just appointed to oversee the U.S. Agency for International Development's democracy and governance programs, which play a vital role in Bush's efforts to democratize Iraq and the broader Middle East.

No doubt, Bonicelli will be a welcome addition. After all, he isn't just any run-of-the-mill Bush hack. He's an academic. Just before his appointment, Bonicelli served as dean of academic affairs at Patrick Henry College in Purcellville, Virginia, a fundamentalist institution whose motto is "For Christ and for liberty," and which has had notable success placing its students in White House internships. Patrick Henry College requires all its affiliates to sign a "statement of faith" indicating that they believe "Jesus Christ, born of a virgin, is God come in the flesh," "Jesus Christ literally rose bodily from the dead," and "all who die outside of Christ shall be confined in conscious torment for eternity."

How brilliant: If bringing democracy to the Middle East is the Bush administration's crusade (and Muslims have been very touchy about Bush's use of that word), why not put a real evangelist in charge? No doubt Muslims the world over will welcome someone looking to save them, not just from oppressive regimes, but from "conscious torment for eternity" as well.

A WEEK OF BAD—AND GOOD

LAST WEEK WAS A HIGH POINT IN the relentless murder by Islamist fanatics of the utterly innocent. In Hadera, five Israelis (including one Israeli Arab) were killed near a falafel stand in a local market when an Islamic Jihad militant chose to go to paradise before his time by blowing himself and those around him to smithereens. His parents were sad but proud. In Huweder, a village northeast of Baghdad, another devout Sunni explosives specialist took the lives of 30 Shia going to Ramadan prayers by detonating a bomb he had hidden in a truck loaded with dates. (This will encourage some critics of the war to urge the United States to leave Iraq. But it just makes it more clear to whom we would be leaving it: the bloodthirsty.) In New Delhi, Kashmiri militants set off three near-simultaneous blasts, killing at least 60 people preparing for a Hindu festival. And that is not the end of the week's death count. A group of killers also decapitated three teenage Christian girls walking to school in Indonesia. The logic of these murders is the logic of genocide, something the world still lacks the will to stop: in Darfur, for example, and other places in Africa. Still, there was also progress last week—at least by U.N. standards—as the General Assembly decided, without audible dissent, to declare January 27 an annual International Day of Commemoration in memory of the victims of the Holocaust. (The resolution also explicitly condemned Holocaust denial.)

Paul J. Bonicelli

Perhaps the move was a partial response to the recent statements that followed in the tradition of Ayatollah Khomeini by Mahmoud Ahmadinejad, the president of Iran, calling for Israel to be "wiped off the map." In any case, the Security Council issued a statement denouncing his chilling words. And it also moved against Syria, longtime handmaiden with Iran to terrorists operating in both Lebanon and Israel. An investigative team commissioned by the Security Council concluded that Damascus was deeply implicated in the assassination of Rafik Hariri—the former prime minister of Lebanon—which took the lives of 22 ordinary Lebanese as well. The Security Council unanimously instructed Syria to come clean about Hariri's murder and, once and for all, leave Lebanon to the Lebanese. Unanimity, however, came at a high cost. To win Russia, China, and Algeria's support for the resolution, the United States, Great Britain, and France (yes, France!), its sponsors, had to drop the warning that if Syria didn't comply, the Security Council would impose sanctions. To be sure, Syria has never recognized the independence of Lebanon in the first place, conceiving of that country as a part of Greater Syria, like parts of Turkey, Jordan, and Israel. There has never been a Syrian ambassador to Lebanon. Having menaced others for decades, the minority Baath Alawite regime in Damascus—much like the now-defunct Baath Sunni regime in Baghdad—is itself facing extinction. Which would be a good thing for everyone. And a practical victory over terrorism, besides.

DAVID COWLES

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NORTHERN EXPOSURE

LAST MONTH, THE MINUTEMAN Civil Defense Corps expanded its vigilante border patrols to the 5,525-mile Canadian border, establishing watches in Washington, Montana, New York, and Vermont. Though we at THE NEW REPUBLIC have no doubt they will do much to alleviate the desperate threat we face from lawless, unassimilated Canadians within our homeland, it must be admitted that there have been certain, er, disadvantages to these patrols. Many Canadian border smuggling routes are along snowmobile trails in dense forest where you "can't see a thing," a Vermont policeman explained to *The Washington Post*. And, even if a volunteer managed to spot an illegal, he likely wouldn't be able to call in the alert because of poor cell phone reception. Difficulties locating the border also present challenges to volunteers. On a recent trip to Vermont, several Minutemen got lost and briefly became illegal immigrants *themselves*—in Canada. Finally, too few illegals came across from Canada to have allowed the Vermont patrols the satisfaction of a single sighting in all of October. "I think I saw a squirrel coming in. That's it," Minuteman Craig Courounis told the *Post* while surveying a frontier bike path from a lawn chair. But take heart. Deterring Canadian fauna from entering the United States illegally is important, too—we hear they maliciously undermined fair wages on the set of "Rocky and Bullwinkle."

DEPARTMENT OF CORRECTIONS

IN HIS REVIEW OF GARRY WILLS'S *Henry Adams and the Making of America* (October 17), Andrew Delbanco erroneously wrote that slaves were counted as "two-thirds" of a person when apportioning representation in the House of Representatives. Slaves were counted as three-fifths of a person. We regret the error. ■

TNR commentary Excerpts from THE NEW REPUBLIC ONLINE

ALITO AND ABORTION.

Mixed Signals

By Ethan J. Leib

When President Bush announced Monday that he was tapping Samuel Alito Jr. for the Supreme Court, the first question on the minds of many Americans was simple: Does his nomination imperil abortion rights? Alito's 90-year-old mother seemed to confirm liberals' worst fears when she said of her son, "Of course he's against abortion."

A close reading of Alito's record complicates any attempt to portray him as a firm opponent of *Roe*.

One can oppose abortion privately without committing to overturn *Roe* v. *Wade*. And, indeed, a close reading of Alito's record complicates any attempt to portray him as a firm opponent of *Roe*.

In *Planned Parenthood* v. *Casey*, the Supreme Court struck down a Pennsylvania statute that required wives to inform their husbands of their plans to seek an abortion. Before the case arrived at the Supreme Court, it passed through the Third Circuit, where Alito argued (in a dissent) that spousal notification was not an "undue burden" on a woman's ability to procure an abortion.

But Alito's dissent was not ideological and did not show any disrespect to governing Supreme Court abortion precedent. On the contrary, Alito's analysis was a careful application of the framework for considering what constitutes an "undue burden" laid out by Justice Sandra Day O'Connor in several of her decisions.

Then, in 2000, in *Planned Parenthood* v. *Farmer*, Alito penned a concurrence further displaying judicial modesty. He applied an opinion from the Supreme Court, *Stenberg* v. *Carhart*, to strike down as unconstitutional a New Jersey partial-birth abortion law.

It's worth comparing Alito's respect for *Stenberg* to Justice Antonin Scalia's earlier dissent in that very case: "I am optimistic enough to believe that, one day, *Stenberg* v. *Carhart* will be assigned its rightful place in the history of this Court's jurisprudence beside *Korematsu* and *Dred Scott*," Scalia wrote. Later in the opinion, he wrote bluntly that "*Casey* must be overruled."

IRAN'S AWFUL, VALUABLE COMMENTS.

Useful Idiots

By James Forsyth

Until last week, the world was drifting toward a reluctant acceptance of Iran as a nuclear state. But, last Wednesday, Iranian President Mahmoud Ahmadinejad, with some help from Tony Blair, transformed the debate. True, there is still no good option for dealing with Iran; but, for the first time, the international community seems to be grasping that a nuclear-armed Tehran is the very worst option of all. And that gives Bush and Blair a much better chance of winning with a bad hand.

Ahmadinejad's declaration that "Israel must be wiped off the map" did not signal a shift in Iranian policy. Blair, though, saw the opportunity the comments presented and used an informal European Union summit to push Europe into a more hawkish stance on Iran. A joint statement by the EU leaders noted, "Calls for violence, and for the destruction of any state, are manifestly inconsistent with any claim to be a mature and responsible member of the international community." Blair then personally went further: "Anyone in Europe, knowing our history, when we hear statements like that made about Israel, it makes us feels very angry, it's just completely wrong. ... Ask yourself: A state like that, with an attitude like that, having a nuclear weapon?"

Blair's framing of the issue was typically astute: Allowing Iran to develop a nuclear bomb would be tantamount to accepting a nuclear holocaust of the Jewish state; and European opinion has thus far embraced the sentiment.

* Ethan J. Leib is a law professor at the University of California's Hastings College of Law.

* James Forsyth is assistant editor at *Foreign Policy*.

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A town reconsiders religion.

Dover Soul

BY JASON ZENGERLE

DOVER, PENNSYLVANIA

ONE DAY LAST SPRING, Bernadette Reinking stepped into the confession booth at St. Rose of Lima Church and asked an urgent question: Was she still a Christian? It seemed strange that she would have any doubts. Raised a devout Roman Catholic, Reinking attended parochial schools from her first day of kindergarten until her last day of nursing school. She was married in a Catholic ceremony at a Catholic church. And, every Sunday since she was a child, she went to Mass. Indeed, for as long as the 58-year-old Reinking could remember, she considered herself a good Catholic. But now, she told the priest, she wasn't so sure.

Reinking's doubts stemmed from her decision earlier this year to run for a seat on the Dover Area School Board. The year before, the school board had voted to require students in biology classes to hear a statement about intelligent design (ID)—a theory that holds that evolution is so complex as to require the hand of an intelligent designer. Reinking felt that the board, in making its decision, had not taken into account opposing views. And, while Reinking did not have a problem with intelligent design being added to the curriculum, she did believe that it should be taught in a comparative religion or modern history course rather than in a science class. She felt strongly enough about all of this to run for office for the first time in her life, and soon she, along with several other similarly minded school board candidates, started going door-to-door in Dover to explain her position to voters. They were not always well-received. Some people slammed doors in their faces; others made monkey noises. Even worse was the whispering campaign alleging that Reinking and her fellow challengers were "un-Christian."

The accusation so troubled Reinking that it drove her to the confession booth at St. Rose of Lima, in nearby York, that day last spring. "I said to the priest ... 'I'm running for the Dover Area School Board. Am I still Christian?'" she recounted recently. She was more than a little relieved when the priest answered, "You most certainly are." Reinking has short, silver hair and a round face that frequently breaks into a smile. She tends to punctuate her sentences with laughter, as if trying to defuse the seriousness of what she's saying. But, as she told the story of her confession, her attempts at levity became strained. Reinking was still troubled by some of the responses to her campaign—and by what those responses revealed about the community in which she lives. From the moment she moved to Dover, a tiny south-central Pennsylvania town, two decades ago, she understood that it was a conservative, religious community. But, until recently, Reinking said, she believed she was sufficiently conservative and religious to fit comfortably within Dover's mainstream. Now she feared that may no longer be the case. "You sometimes just have to say to yourself, 'I know what I believe in, I know that I'm a good person, and I know that I'm a Christian,'" Reinking said, failing to end her sentence with a laugh.

Just 25 miles north of Dover, in Harrisburg, the intelligent design debate is being played out in the national spotlight, in a courtroom. There, in a trial that has been dubbed Scopes II, eleven Dover parents are charging that intelligent design is nothing more than gussied-up creationism and that the school board violated the separation of church and state. For the past six weeks, Judge John E. Jones has listened to testimony not only from school board members and parents, but also from scientists, theologians, and other experts on both sides of the ID-evolution debate. And, sometime after the trial ends on November 4, Jones will issue his ruling about what exactly ID is—a scientific theory or a religious belief—and whether it belongs in Dover's biology classes.

But, back in Dover, away from the glare of national attention, the intelligent design issue is not so theoretical. Instead of dueling experts, it pits neighbor against neighbor. And, instead of a judge, it will be regular citizens who issue a ruling, when, on November 8, they go to the polls to cast their votes in the school board race. The campaign has divided Dover, but not between those who are religious and those who are secular; religiosity abounds on both sides of the race. Rather, the school board campaign, more than any abstract culture war issue, has forced this conservative town to determine the degree to which it wants religion to be part of its public life. Which, for some Dover residents like Reinking, has in turn prompted a crisis of faith.

ALONG CARLISLE ROAD, the two-lane state route dotted with churches that runs in and out of Dover, are four giant billboards. One reads, IT'S TIME FOR A NEW SCHOOL BOARD IN DOVER. Another counters, HELP ELIMINATE PROPERTY TAXES AND SUPPORT ACADEMIC FREEDOM. RE-ELECT YOUR DOVER SCHOOL BOARD.

The slogans aren't exactly earthshaking, but the fact that they've been plastered on billboards is. Until now, school board races in Dover have been ho-hum affairs, sometimes not even drawing enough candidates to make them competitive. But, in the wake of the intelligent design controversy, 18 Dover residents registered to run in May's primary for seven open seats. (An eighth seat subsequently opened when a school board member resigned.)

The unusually large field of candidates has led to an unusually heated and intense campaign. Eight school board incumbents have secured spots on the Republican ballot, and eight members of an opposition group, Dover Citizens Actively Reviewing Educational Strategies, or Dover CARES,

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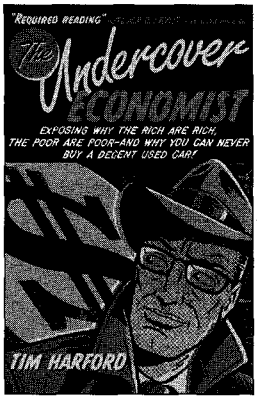
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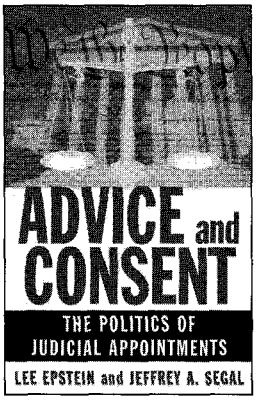

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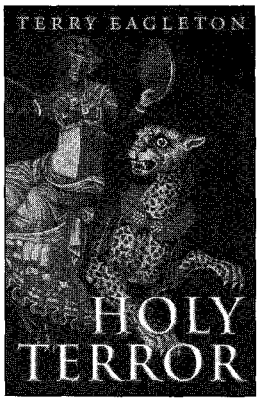

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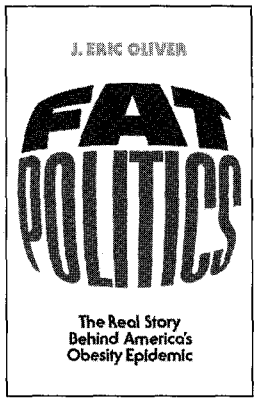

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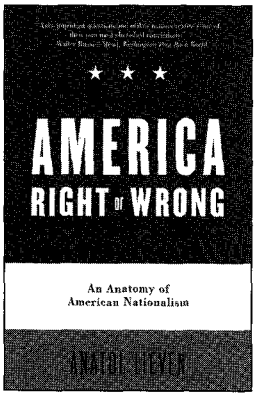

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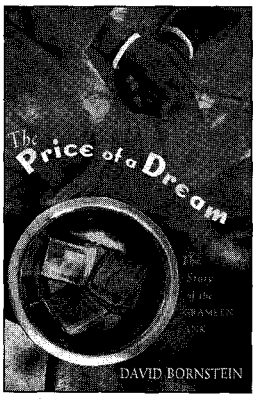

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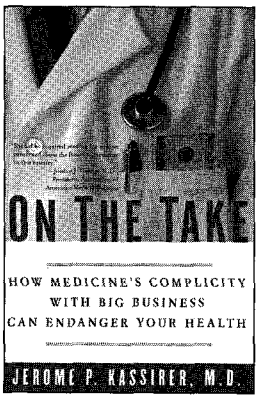

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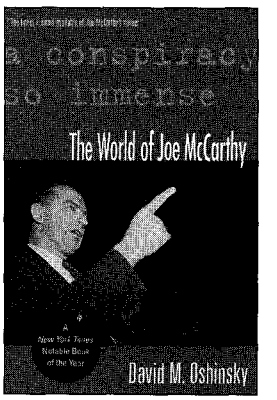

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have won places on the Democratic ticket (though four of them, including Reinking, are Republicans). Both groups predict that every house in Dover township with a registered voter (of which there are about 16,000) will receive a personal visit from at least one candidate on their respective slates before Election Day. And the two groups have been churning out mass mailings. One, sent out by the school board, linked Dover CARES to the ACLU, which, the mailing noted, defends the North American Man/Boy Love Association's "right to put out information on how adults can lure young children into having sex with them." "This is not a normal school board campaign," said Judy McIlvaine, a Dover CARES candidate with a penchant for understatement.

On a Saturday in late October, Dover CARES held a chicken barbeque fund-raiser in a local park. It was raining, and the temperature was hovering in the 40s, but that didn't stop a steady stream of people from lining up to pay $6.50 for a chicken dinner. One of the volunteers handing out meals was Nathan Eifert, who has lived in Dover since childhood. A former banker who is now a stay-at-home father, the 36-year-old Eifert and his family attend services at a United Church of Christ, and he said that, when his two-and-a-half-year-old daughter starts school, he wouldn't object to her learning about ID. "But it needs to be in the proper setting," he added, "like an elective course that can't be challenged on church-state grounds." He went on, "I don't think the community supports the decisions of this school board. The intelligent design motion was more about the school board's personal agenda than it was about Dover. And I hope that becomes clear on Election Day."

But, the next day, over on the other side of Dover, outside of Rohler's Assembly of God Church, Paul Bartels was of another mind. Bartels had just come from morning worship at a tiny red brick church. Its pastor, Ed Rowand, is a school board member. An architectural designer who moved to Dover six years ago, Bartels is 30 years old with three young children whom he intends to raise in such a way that they won't put too much stock in Darwinism. "I'm bringing my kids up to know better," he said. He supports the school board's ID decision. "They put their faith in God," he said, "and, any time you do that, it's always a good thing."

EIFERT AND BARTELS represent the two poles of Dover's current divide over religion and its place in public life. For many years, when Dover was an agrarian community, there seemed to be a consensus about what that place should be. But, over the last few decades, that consensus has eroded, as much of what was once farmland has given way to subdivisions and Dover has become a bedroom community for York and Harrisburg. Dover's transition from rural to suburban has prompted some residents to increase their religiosity: In the face of change, they've taken comfort in more conservative, more evangelical, more politically assertive churches—so much so that Dover's politics now have a deep conservative, evangelical streak. While John Kerry won Pennsylvania in the 2004 election, President Bush carried 64 percent of the vote in York County, where Dover is located.

The current Dover school board is rooted in this conservative, evangelical culture. The first noises about intelligent design came from Bill Buckingham, a then–school board member who belonged to Harmony Grove Community Church, one of the most conservative evangelical churches in Dover. In June 2004, when the school board began deliberating about whether to purchase a new ninth-grade biology textbook, it was Buckingham who complained that the textbook was "laced with Darwinism." At the next school board meeting, Buckingham's wife gave a 15-minute speech in which she quoted the Old Testament and argued that students should learn about biblical creation. Warren Eshbach, a retired pastor who later became active in Dover CARES, attended the meeting and was taken aback. "I said, 'Wait a minute, where am I? In church or at a school board meeting?' "

A few weeks later, Buckingham said he would approve the textbook only if the board purchased another book—to serve as a companion text—called *Of Pandas and People*, which promoted ID. Buckingham's push for *Of Pandas and People* failed at that meeting and at subsequent ones that summer. But then, at the October 2004 meeting, after three hours of often heated debate between school board members and some residents in attendance, the board voted six to three to have a statement read to each biology class mentioning intelligent design. The three members who voted against the motion subsequently resigned. (According to one of them, Casey Brown, Buckingham told her after the vote that she was "going to hell.") And, when the board chose to replace them with new members who supported the ID decision, the stage was set for the current campaign.

At the more evangelical churches in Dover, such as Harmony Grove and Rohler's Assembly of God, the pastors often speak from the pulpit about the importance of supporting the current school board. (Harmony Grove parishioners even contributed money to purchase 60 copies of *Of Pandas and People* for the school after Buckingham made a request during a Sunday service.) But, besides holding their organizational meetings in a Lutheran church, the Dover CARES candidates have eschewed outwardly religious appeals; nor have they asked their own pastors to make them on their behalf. In the process, they hope to set an example of how to strike a balance between personal faith and public policy. But they concede that striking that balance has been difficult.

Reinking, for her part, seems anxious for the whole thing to be over. As she packed up chicken dinners at the Dover CARES fund-raiser, she said the campaign had been more divisive than she'd anticipated. But she did seem momentarily cheered by one fact: Because of the rain, she would not be going door-to-door that afternoon. Just the other day, she said, another person had slammed a door in her face. "He had a big wooden cross around his neck," Reinking recalled. "It was very Christian of him." ■

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Beirut Dispatch

Cedar Bluffs

BY ANNIA CIEZADLO

SINCE THE FEBRUARY 14 assassination of former Lebanese Prime Minister Rafik Hariri, Lebanon's anti-Syrian opposition has demanded two things: the truth about Hariri's killing and President Emile Lahoud's resignation. Two weeks ago, they got their first wish. U.N. investigator Detlev Mehlis released his report on Hariri's assassination, confirming what most people here already suspected: Top Lebanese and Syrian officials plotted the prime minister's murder.

By rights, the opposition's second wish should be fulfilled by now, too. After all, eight months have passed since the popular uprising known as the Cedar Revolution ousted the country's pro-Syrian prime minister. And, as the U.N. Security Council considers sanctions against Syria, Lebanon seems ready to throw off the last vestiges of Syrian domination—chief among them an unpopular, pro-Syrian president whose term was extended by Syrian fiat, setting in motion the series of events that led to Hariri's killing, and whose top security chief is under arrest for conspiring to murder the ex-prime minister Lahoud hated. And, yet, Lahoud remains in power. To understand why, you have to know something about Lebanon's Byzantine political system—and about how little the United States has done to promote real democracy here.

ONE OF THE peculiarities of Lebanese politics is the power of a bearded old man in a black priest's cassock, the Maronite Patriarch Nasrallah Sfeir. A member of the Vatican's College of Cardinals, Sfeir is the spiritual—and, in some ways, political—leader of the country's influential Maronite Christian minority, most of which backs the anti-Syrian opposition. Last week, Sfeir declared that it is Lahoud's decision whether to resign, saying that "we must show more respect toward the presidential post." Firing Lahoud is, at least for now, off the table.

Sfeir is reliably anti-Syrian, but, thanks to the convoluted crosscurrents of Lebanon's confessional system of government, here he is propping up Syria's man in Beirut. By common agreement, the three top jobs in Lebanon's government are assigned not by merit or popular election, but by religion—as though the United States always had to have a Catholic president, a Protestant vice president, and a Jewish speaker of the house. Under Lebanon's unwritten rule of governance, the president is always a Maronite, the prime minister must be a Sunni Muslim, and the speaker of parliament is a Shiite. Firing the president, then, would weaken the Maronite community as a whole—and upset the delicate, fractious tangle of cross-confessional allegiances that makes up Lebanon's almost-democracy. "[Sfeir] does not want this scenario of a Maronite who has stepped down under pressure of non-Maronites," says Lokman Slim, head of Hayyabina ("Let's Go" in Arabic), a civil society group that opposes sectarian politics. "He thinks that this thing should be settled within the Maronite family, the Maronite circle."

The confessional system does have one major advantage: In theory, it protects minorities from the tyranny of the majority, which, in Lebanon, is Muslim. But, in practice, the system leads to gridlock and corruption without necessarily protecting minority interests. Of Lebanon's 18 officially recognized sects, the Lebanese government apportions parliamentary seats between the ten largest sects, bundling the rest into one "minority" seat. With each sect demanding its say in key decisions and its share of public sector jobs, paralysis is inevitable. As a result, the government fails to perform basic duties—like holding a census, a task that Lebanon has not pulled off since 1932.

There is one way to break the deadlock, however: favors. In Arabic, the term for this is *muhasassa*, the divvying up of spoils. Lebanon's parliamentarians are such masters at it that one former president dubbed them the *fromagistes*—or "cheese-eaters" in French—for those who divide up the proverbial pie. "Consensus leads to deadlock," says Charles Adwan, the former head of the Lebanese Transparency Association, a Lebanese anti-corruption watchdog. "And deadlock can only be solved in two ways: One way is by sharing the pie, distributing spoils to all the players. Way number two is by foreign intervention." In the past, Syria effectively functioned as a tiebreaker, literally telling the Lebanese government what to do.

Today, with Syria's star sinking, another power has risen: the *zaims*, or traditional feudal lords of Lebanon, who dominate its political system. An ideal *zaim*—as Fouad Ajami points out in his brilliant history of Lebanon, *The Vanished Imam*—was the scion of a prominent family. For instance, Druze warlord Walid Jumblatt is in this traditional mold. But Hariri was a notable exception. A self-made man from a plebeian family, Hariri was an all-too-rare kind of political leader, who succeeded through hard work and savvy instead of by patrician birth. But, when Hariri died, the *zaims* took their revenge: Nobody questioned that Hariri's son, Saad, a businessman with no political experience, would succeed him. As a result, many young Lebanese feel that they had surrendered the Cedar Revolution's promise of "people power" to the very same faces that have always ruled the country.

So far, the United States has done little to break the power of the *zaims* or change the confessional nature of Lebanese politics—both prerequisites for real democracy to take hold here. Instead, Washington—primarily fo-

Annia Ciezadlo is a writer in Beirut, Lebanon.

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cused on neighboring Syria—has opted for expediency, signaling that it will back the Hariri camp in whatever it does. In a time when good news is scarce, George W. Bush's team regards Lebanon as a success story. "They need a quick win," says one member of a multinational organization familiar with Washington's thinking. "This is what Lebanon could offer: a quick win, a fix where they don't have to spend a lot of money, and they can see the fruits of their efforts and say, 'Look what we've done in Lebanon. Look: Democracy is possible in the Middle East, and now you have a democratic political process that is flawed, but is functioning nonetheless.'"

But Saad Hariri, who has strong financial and political ties to Saudi Arabia, doesn't just represent himself or his murdered father; he also represents the Sunni Muslim political bloc. At the moment, that bloc is aligned against General Michel Aoun, a Maronite former army commander. Aoun, who is nicknamed the "Orange Tsunami" after his movement's trademark color and his surprisingly strong showing in June's parliamentary polls, has managed to alienate just about every member of Lebanon's political class. Yet his cadres formed the backbone of the Cedar Revolution, and, in terms of popular support, he is the leading candidate for president, which is one of many reasons the parliament is deadlocked.

TODAY, LEBANON'S NEW government is hammering out an electoral law that promises to be much fairer than the old one. One of the reforms it will consider—and most likely adopt—is proportional representation, a distinct improvement over the current system of winner-take-all party slates. But there are other reforms that Lebanon should consider—and which the United States is in an excellent position to encourage. One suggestion is the creation of broad-based parties that will transcend religious groups. Some suggest a mechanism somewhat like Germany's, where a certain percentage of votes guarantees a presence in parliament, thereby encouraging mergers and cross-confessional platforms.

Another needed reform is direct elections for president. In a Zogby poll conducted in April, pollsters found "significant support" among all sects for the principle of a directly elected president. "Unless we elect our president by popular vote, we will remain a nineteenth-century democracy—the old-style parliamentary democracy, where you elect a group of notables, and they select the head of state," says Chibli Mallat, a law professor at Beirut's St. Joseph University and currently a senior fellow at Yale Law School. "No modern democracy accepts that the head of the executive branch doesn't get elected directly by the people."

Well, almost no modern democracy. Americans who remember their own 2000 presidential elections might take issue with Mallat. But, like the United States, Lebanon is not just a country, but an example: As the Arab world's only functioning democracy, it is doubly precious—more worthy, perhaps, of healthy criticism and scrutiny, not less. ■

An indefensible indictment.

Overcharged

BY JEFFREY ROSEN

JOURNALISTS HAVE REACTED to the indictment of Scooter Libby more or less along party lines. *The New York Times* editorial page noted that the perjury, obstruction of justice, and false statement charges filed by Patrick Fitzgerald, the special prosecutor, are "very serious," adding that "the Republicans' attempts to belittle the charges are quite a switch, considering that many of these same politicians gleefully helped to impeach President Bill Clinton on similar charges in a much less serious context." *The Wall Street Journal* editorial page countered that "Libby was defending administration policy against political attack, not committing a crime" and suggested that the indictment "looks like a case of criminalizing politics." On both ends of the political spectrum, however, there has been wide praise of Fitzgerald's restraint and professionalism in focusing on a relatively clear-cut case of false statements rather than indicting officials or reporters for disclosing official secrets.

But it's important for journalists (including me) who vigorously opposed the Kenneth Starr investigation to state the obvious: The Fitzgerald indictments are an embarrassing confirmation of the old Washington rule that, when special prosecutors can't prove a crime, they indict the target for obstructing the investigation. Far from being typical behavior, indicting suspects for nothing more than false statements or perjury is a vice largely restricted to special prosecutors and independent counsels. And, although Libby's alleged lies to protect his boss may appear more serious than Bill Clinton's self-interested lies about sex, neither Clinton nor Libby prevented the special prosecutor from proving an underlying crime. In fact, there's strong reason to conclude that no underlying crime was committed. Unlike the Starr investigation, moreover, the Fitzgerald investigation represents a disaster for the First Amendment and may do long-lasting damage to political discourse in Washington.

THE PRAISE FOR Fitzgerald focuses on the charges he did not bring. He did not prosecute Bush administration officials or journalists under the rarely invoked law he was originally appointed to investigate—the Intelligence Identities Protection Act, which forbids the knowing disclosure of the identity of a covert government agent. He did not invoke a broader provision that makes it a crime to disclose classified information—a statute that, if it were regularly enforced, would criminalize what most national security reporters do every day. As John Tierney of the *Times*, an eloquent critic of what

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he correctly calls "Nadagate," acknowledges, Fitzgerald also "didn't indict anyone for seemingly minor discrepancies in testimony." Instead, his indictment makes a relatively strong case that Libby lied repeatedly before the grand jury about when and how he first learned that Joseph Wilson, a critic of the administration's case for the Iraq war, was married to Valerie Plame, a CIA agent. Showing prosecutorial experience that Starr lacked, Fitzgerald at least brought a false statements indictment that is easy to understand.

But the idea that Fitzgerald should be praised for the charges he didn't bring is absurd. Fitzgerald's main justification for bringing the perjury and obstruction charges was that Libby's alleged lies made it harder for the special prosecutor to know whether a crime had been committed. "What we have when someone charges obstruction of justice is the umpire gets sand thrown in his eyes," Fitzgerald said, using a labored baseball metaphor. "He's trying to figure out what happened, and somebody blocked their view."

The metaphor, however, is unconvincing: "It's more like criminalizing someone for arguing with the umpire's ball or strike call," says Harvard Law Professor and TNR contributor William J. Stuntz. Libby's alleged obstruction did not block Fitzgerald's ability to decide whether he violated the Intelligence Identities Protection Act; Fitzgerald could have concluded months ago that there was no violation. To breach the meticulously drafted law, a person with access to classified material who learns the identity of a covert agent has to intentionally disclose information identifying the agent, knowing that this information will blow the agent's cover and that the United States is taking affirmative measures to conceal the agent's identity.

In their exemplary brief filed in March 2005, a consortium of news organizations argued that there were serious questions about whether Plame qualified as a covert operative under the law. She was working at a desk job in Langley in July 2003, when Robert Novak first revealed her name, and arguably had not been assigned to duty outside the United States in the past five years, as the law requires. Moreover, there was little evidence that the government was taking "affirmative measures" to conceal her identity. Given the continuing uncertainty about Plame's status, it's unlikely that Libby both knew she was a covert agent in 2003 *and* disclosed her identity intentionally. (As Fitzgerald noted at his press conference, negligent or accidental disclosures are not illegal.) And, even if you assume the worst about Libby, it's hardly obvious that the question of who first told him that Plame worked for the CIA—was it, in other words, his government colleagues or NBC's Tim Russert?—would cast much light on whether he broke national security law.

In his press conference, Fitzgerald abruptly shifted gears when questioned about why he brought perjury and obstruction charges without finding an underlying violation of the law. He suggested that it didn't matter what law Libby violated. "When you do a criminal case, if you find a violation, it doesn't really, in the end, matter what statute you use if you vindicate the interest ... of the public in making sure he's held accountable," he said self-righteously. This is the usual last defense of the special prosecutor, but Fitzgerald suggested that he was doing what ordinary prosecutors do all the time. "When I got to Chicago, I knew the people before me had prosecuted false statements, obstruction, and perjury cases," he said at his press conference.

Contrary to Fitzgerald's claim, charges of perjury, obstruction, and false statements are relatively rare in federal criminal prosecutions. In 2004, federal prosecutors launched 80 perjury cases out of 70,397 criminal cases. "Ordinary prosecutors rarely indict people for perjury and more often indict people for false statements, but almost always as part of a broader indictment including more serious charges," Stuntz says. A review of Fitzgerald's record as an ordinary prosecutor suggests he has presided over more perjury, obstruction, and false statement cases than most. But, when he has issued indictments on those charges alone, it's usually been for bit players covering for people indicted for major crimes. It's *special* prosecutors who are known for indicting suspects for making false statements *alone*, without charging anyone with any other indictable offense.

The closest analogue to the Libby indictment is not, in fact, Starr's charges against Clinton. It's Starr's indictment of the now-forgotten Julie Hiatt Steele. The Steele indictment, the craziest of Starr's excesses, stemmed from his frustration at Clinton and his aides for trying to smear Kathleen Willey, who alleged that Clinton groped her in the Oval Office. Steele was Willey's former friend. She initially told *Newsweek*'s Michael Isikoff that Willey had come to her house to tell her about the advance on the night it occurred, but then recanted, told Isikoff she had lied at Willey's request, and repeated this recantation to Starr's FBI agents and two grand juries. Starr, outrageously, indicted Steele on three counts of obstruction of justice and one count of making false statements to federal agents—much like Fitzgerald. In the end, Starr's last stand ended in a hung jury, a warning that Fitzgerald may have a hard time convicting Libby as well.

Just as Democrats were right to denounce Starr for criminalizing insignificant and immaterial lies, Republicans are right to denounce Fitzgerald for the criminalization of political differences. It's been clear from the beginning that Libby, Karl Rove, and Dick Cheney were trying to discredit a critic of the administration, not trying to disclose the identity of a covert agent. But what makes Nadagate even worse than Monicagate is its effect on the First Amendment. Nevermind whether Judith Miller of the *Times* is a trustworthy journalist: She and Matthew Cooper of *Time* were correct to fear the spectacle not only of having to appear before a grand jury but also of being charged themselves with violating national security laws. And, as the columnist Walter Shapiro notes, they were also correct to fear the costs of appearing in a public trial talking about their previously off-the-record conversations with

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their sources—costs that might make national security reporting far harder in the future.

IT'S A SIGN of the declining political clout of the traditional media that Congress is in no rush to pass a version of a federal shield law that would protect professional reporters from having to reveal their sources in federal investigations (except in cases where the disclosure is necessary to prevent imminent harm to national security). Thirty-one states and the District of Columbia have shield laws, as do a number of European countries. But a bipartisan shield law bill is moving slowly through the House and Senate, in part because of the opposition of the Justice Department and in part because of opposition from bloggers.

The current Senate proposal, sponsored by Chris Dodd and Richard Lugar, necessarily limits the protections of the shield law to professional journalists; otherwise any citizen who wanted to avoid testifying before a grand jury could simply start a blog. But defining a professional journalist is tricky. Lugar's spokespeople have suggested that bloggers who act like businesses—that is, whose sites include ads and are updated periodically—might be protected, while more sporadic, unpaid bloggers would not. The blogosphere, predictably, has denounced this idea as elitist and discriminatory. "It's astounding to me that your right to free speech depends on whether you're making money or not," Glenn Reynolds, a University of Tennessee law professor who blogs at Instapundit, told *Washington Internet Daily*.

In fact, there is a clear difference between what many bloggers do—opinion and analysis that does not rely heavily on reporting and sources—and the work of most reporters for the *Times* and *The Washington Post*. For professional journalists, the ability to cultivate sources and win their trust is the key to success or failure; and, as the *Times*' courageous and principled support for the flawed Miller shows, professional journalists rely on the power and money of large institutions to stand by them if the reporter-source relationship is invaded by unbalanced prosecutors. To sacrifice that relationship merely to assuage the vanity of bloggers is shortsighted in the extreme.

FOR NOW, THE prospects for a federal shield law seem poor, but the need may grow ever more intense if the Fitzgerald investigation is a harbinger of things to come. State district attorneys investigate particular crimes; federal prosecutors investigate particular suspects; and special prosecutors investigate efforts to impede their own investigations. Patrick Fitzgerald, by all accounts, is as scrupulous and fair-minded as prosecutors come. But the fact that even he succumbed to the old temptation to indict otherwise innocent officials for misleading him and his investigators reminds us, once again, that the entire apparatus of special prosecutors is a menace. Rather than applauding his handiwork, Democrats as well as Republicans in Congress should do everything possible to ensure that his familiar but illiberal abuse of power is never repeated again. ■

The Court's new swing vote.

Kennedy Center

BY EDWARD LAZARUS

IN THE HISTORY books, the Supreme Court era from 1986 through 2005 will be known as the Rehnquist Court, but it would be more accurate to describe it as the "O'Kennedy Court," one thoroughly dominated by Justices Sandra Day O'Connor and Anthony Kennedy, who held down the ideological center of a closely divided bench. From abortion rights to affirmative action, the religion clauses, the death penalty, states' rights, and other key issues, O'Connor and Kennedy, either separately or jointly, controlled the direction of constitutional law. With some exceptions (most notably *Bush* v. *Gore*), they guided the Court toward a soft landing on the politically safe ground of nonradical conservatism.

If President Bush succeeds in elevating Judge Samuel Alito to the seat being vacated by O'Connor, this typography will change. Whatever the exact contours of his jurisprudence, Alito's record makes clear that he will join Justices Antonin Scalia, Clarence Thomas, and John Roberts (with some modest gradations among them) on the Court's right wing. And that will leave Kennedy standing alone at the Court's political pivot to be incessantly importuned by colleagues and advocates to the left and right.

Kennedy's move to center stage will have consequences, but those activists on the right and left who are either hoping or dreading dramatic change at the Court will almost certainly be disappointed in the short term. Given Kennedy's approach, the Roberts Court, with or without Alito, is likely to start off very much like its predecessor—as a Court that relishes its own power to shape the Constitution and second-guess the states and the other branches of government, but that generally does so within the conservative mainstream of U.S. politics. With remarkable consistency, Kennedy has resisted a counterrevolutionary rollback of progressive Warren- and Burger-era decisions, and, on occasion, he has even joined the liberals to expand civil liberties. Although Kennedy is more conservative than O'Connor in some respects, they have reached similar results in most key areas of law. The main difference between the two is in style, with Kennedy favoring much broader opinions than O'Connor. For that reason, a likely result of Kennedy replacing "O'Kennedy" will be higher stakes in constitutional litigation, as the winners enjoy the benefit of Kennedy's generally sweeping rulings rather than O'Connor's case-specific ones.

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THINKING PURELY IN terms of bottom-line results, the maximum effect of an Alito confirmation will be to shift the Court to the right in every case where O'Connor would have cast a more liberal vote than Kennedy. The list, however, is shorter than one might think and does not presage overturning any of the usual conservative targets.

In lockstep with O'Connor, Kennedy is already on record reaffirming the chief targets of conservative ire: *Roe* v. *Wade*, *Miranda* v. *Arizona* (guaranteeing persons subject to police interrogation the right to remain silent and to counsel), and *Engel* v. *Vitale* (the ban on public school prayer). And, although Kennedy takes a more skeptical view of affirmative action than O'Connor, he has repeatedly declined to join Scalia, Thomas, and William H. Rehnquist in declaring it per se unconstitutional.

With respect to the balance of power between the states and the federal government, Kennedy has supported new limits on federal legislative power and helped augment the authority and immunities of the states. But his views regarding federalism are not markedly different from O'Connor's. Like her, Kennedy has shown no interest in unraveling the constitutional underpinnings of the New Deal, and, as reflected in last term's decision striking down California's medical marijuana initiative as inconsistent with federal law, Kennedy is sometimes more solicitous of federal power than O'Connor (who dissented).

To be sure, Kennedy has stood significantly to O'Connor's right at times. He thinks a ban on partial-birth abortion is constitutional; she did not. He is much more accommodating of state-sponsored displays of religious symbolism, like the Ten Commandments. But Kennedy is also to the left of O'Connor on numerous civil rights and civil liberties issues. For example, in *Lawrence* v. *Texas*, he extended the definition of constitutional liberty to protect consensual acts of gay sex; she did not. Over an O'Connor dissent, he wrote the majority opinion in *Roper* v. *Simmons*, striking down the juvenile death penalty. Kennedy also frequently takes a more liberal view than O'Connor on free speech issues, including giving First Amendment protection to flag-burning and striking down Congress's blunderbuss attempts to regulate Internet pornography.

OVERALL, IT WOULD be difficult to characterize O'Connor as more "liberal" than Kennedy, or vice-versa. The most salient difference between the two has less to do with the results they reach in individual cases than the methods they employ along the way. O'Connor approaches decisions in a highly personalized fashion, favoring "I-know-it-when-I see-it" legal standards through which she projects her own up-by-the-bootstraps, country-club Republicanism on the law. So it is that abortion regulations are evaluated under her inherently standardless "undue burden" standard, while the constitutionality of public displays of religious symbolism rise or fall on a highly subjective determination of whether they amount to a state "endorsement" of religion.

Kennedy's jurisprudence, by contrast, is based not on such gut reactions, but on his somewhat grandiose vision of Supreme Court justices as knights errant seeking constitutional truth and righting constitutional wrongs, regardless of their own personal preferences. Hence his proud lament in the Texas flag-burning case, "The hard fact is that sometimes we must make decisions we do not like." In keeping with this role, Kennedy's opinions often feature grand statements of principle, as in the areas of abortion and gay rights, where, almost mystically, he described the concept of constitutionally protected liberty as "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."

Sometimes Kennedy's idealistic view of the Constitution and the Court's work leads in conservative directions, as when he prefaced his most important federalism decision, *U.S. Term Limits* v. *Thornton* (which strikes down federal term limits) by extolling the genius of the Framers, who "split the atom of sovereignty." Other times, as in *Lawrence* v. *Texas*, it drives him to an expansive view of individual rights. But, in almost every case, Kennedy expresses a self-confident vision of the law quite at odds with O'Connor's self-referential minimalism. As a result, with Kennedy at the Court's tiller, the aggregate direction of constitutional law may remain relatively unchanged, but the tacks right and left will be more pronounced than O'Connor would have chosen.

This distinction takes on added meaning in the context of a Court engaged in an unprecedented level of judicial activism—thanks again, in large part, to O'Connor and Kennedy. Both justices have shown themselves to be extraordinarily comfortable with the exercise of judicial power, even if that means overturning the judgments of elected representatives. Between 1995 and 2000, for example, O'Connor voted to overturn a state or federal law 50 times, Kennedy 51 times. Whether the issue is unbridled executive branch discretion over enemy combatants, or deciding a presidential election, or nullifying attempts to legislate morality, these justices have led the Court to declare resoundingly that it is, indeed, the ultimate arbiter of the law, unabashed about trumping the judgments of others.

There is no reason to think that this hallmark of the modern Court is likely to change should Alito join the Court. And, thus, the most important question to be asking as Alito sits before the Senate has little to do with the political direction of the Court. That is set. With Kennedy in the driver's seat, the Court will be largely what it has been: generally quite conservative yet narrowly divided, yawing one way or the other depending on Kennedy's vote. Instead, the burning question is one of judicial power and whether we, as a nation, should be comfortable yielding to nine, unelected, life-tenured judges the monumental and ever-increasing power over our constitutional legacy that they have now appropriated and exercise almost without question. ■

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White House Watch

Chief of Gaffe

BY RYAN LIZZA

BACK IN 2002, David S. Addington, Dick Cheney's White House lawyer and the man tapped this week to replace Scooter Libby as the vice president's chief of staff, dashed off a letter to one John Wooden, the Brooklyn-based proprietor of Chickenhead Productions, which describes itself as "Earth's preeminent purveyor of loathsome and hopelessly puerile parody, produced by a detestable clique of New York City failures, who toil ineffectually in abject poverty and much-deserved obscurity." Chickenhead's most famous creation is Whitehouse.org, a parody site whose photos and fake bio of Lynne Cheney—"she likes movies, Infusium 23 shampoo, postmodernist interpretive dance"—drew the ire of the vice president's secretive and powerful counsel. "I request," Addington demanded of Chickenhead's Wooden, "that you delete the photographs of her and the fictitious biographical statement about her from the website."

Wooden immediately acted. He retained an ACLU lawyer, posted Addington's letter on Whitehouse.org, spent several days giving interviews, and enjoyed a quantum leap in traffic to his site. Meanwhile, embarrassed by the attention and the questions about whether the vice president's office might not have more important things on its agenda, Cheney's office denied the veep had any knowledge of the matter and dropped its demands. Wooden is eternally grateful for Addington's small-mindedness. This week, his company's website features a new message: "Chickenhead would like to formally congratulate its bestest-ever pal, David Addington, on his recent promotion to the role of Vice Presidential Chief of Staff."

The Chickenhead incident was a minor dustup, but it's emblematic of the larger role Cheney's staff—and specifically Addington—play in the Bush White House. On issue after issue, the Office of the Vice President overreacts and overreaches, pushing policies that end up embarrassing the administration and from which, more often than not, President Bush must retreat. But Cheney never seems to learn any lessons from these capers. If he had, he never would have promoted David Addington.

CHENEY'S WEST WING fiefdom is the source of many of Bush's current woes. Whether it's the Libby indictment, the White House stonewalling of the Senate investigation into prewar intelligence, or the policy wars over torture and military tribunals, Cheney's office is now the center of Washington intrigue. At the heart of the vice president's operation is Addington, the 48-year-old lawyer who has followed Cheney from Congress to the Defense Department to the White House. The two men have stirred up controversy at every stop. When, as secretary of defense, Cheney hired Addington as his special assistant in 1989, he kicked a military aide out of an adjoining office and installed Addington in his place. In what was one of the first signs of the two men's decades-long attempt to reverse the post-Watergate containment of executive branch authority, one of Addington's projects at Defense was to curtail congressional meddling in the management of the department. In the 1990s, it was Addington who kept the flickering Cheney political flame alive, running the committee Cheney used to test a presidential run. During the 2000 campaign, Addington prepped his boss for the debate with Joe Lieberman.

Addington's White House service has been marked by a singular obsession with fighting off all attempts to limit presidential power. It began in 2001, when the General Accounting Office (GAO) and a pair of public interest groups separately tried to investigate the role lobbyists played in shaping Cheney's energy plan. Addington crafted the White House legal strategy of noncooperation. In letter after letter, Addington tartly informed the GAO it was acting beyond its authority. Meanwhile, the White House fought the outside groups in court. In one sense, the strategy was vindicated. In 2004, the Court ruled that Cheney could shield from the public many of his contacts with industry lobbyists. But there was a downside. The long, multi-front battle assured regular front-page news about the White House's secretive task force, and a drip of documents and details that the GAO and others did manage to extract were regularly released. The wiser course for Bush might have been to dump the documents back in 2001 and put the matter behind him.

The energy brawl was just the beginning of a pattern. In 2002, Addington and Cheney objected to the Democrats' idea for a Department of Homeland Security, arguing that a White House office of homeland security, immune from congressional oversight, would be preferable. And, as usual, that position became a politically untenable embarrassment. It was only when the matter was turned over to Bush's in-house pragmatist, Andy Card (who drafted language creating the department in secret), and his political adviser, Karl Rove (who foresaw that Democrats could be baited into voting against the department), that the issue turned into a political plus for Bush. When the matter was in the hands of Cheney and his White House attorney, it was a disaster. But the veep and his aide learned nothing from the incident. When the 9/11 Commission came knocking on the White House's door in 2003, the game plan was repeated. Addington and Cheney took the hard-line, no-cooperation position until it became a national scandal. Then Bush was forced to relent.

Addington is most notorious for his role in the creation of Bush's military tribunals at Guantánamo Bay and for giving his legal imprimatur to torturing terrorism suspects,

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two Bush decisions that have done immeasurable harm to the U.S. image abroad. *The New York Times* called Addington "one of the most important architects of the administration's legal strategy against foreign terrorism." Of the administration officials involved, the Cheney lawyer proposed the most extreme ideas on how the tribunals should operate, policies that even John Ashcroft privately described as "draconian": no civilian lawyers, no civilians on the panels that would hear appeals, and no presumption of innocence for defendants. Some in the administration argued that the tribunals should be crafted to make it difficult for the judiciary to challenge their legality. Addington, on the other hand, pushed for confrontation with the courts. "Addington's position was, 'We think what we're doing is right—why should we stop doing it?'" a former White House official told the *Times*. "'If the courts tell us we're wrong, we'll stop then.'" The constitutionality of the tribunals has been appealed all the way to the Supreme Court, which again raises the question of whether Cheney's staff's repeated willingness to bait judicial review of their actions is strengthening the presidency or, as Republicans argued when Bill Clinton appealed issues of executive power to the courts, weakening it.

This pattern of Cheney aides staking out extreme positions until they lead to a political crisis or judicial rebuke reached its zenith in the case of the infamous Justice Department memo arguing that torturing suspected terrorists "may be justified." According to *The Washington Post*, which first obtained the legal document, Addington was the most vigorous advocate of the so-called "commander-in-chief" section, which stated that any law barring torture "does not apply to the President's detention and interrogation of enemy combatants." In a separate memo, which Addington wrote under Alberto Gonzales's name, he argued that Geneva Convention provisions were obsolete for terrorist suspects. Inevitably, the administration distanced itself from these policies, once the details became public, partially because they threatened Gonzales's nomination to be attorney general. But, even now, after the domestic and international outcry, Cheney and Addington continue a two-front battle to retain Bush's right to torture. They are simultaneously fighting John McCain's Senate legislation, which would ban cruel, inhumane, and degrading treatment of prisoners, and, as the *Times* reported on Wednesday, battling officials within the administration who want to use Geneva language in the new Defense Department guidelines on handling terrorist suspects. The *Times* reported, "According to several officials, Mr. Addington verbally assailed a Pentagon aide who was called to brief him and Mr. Libby on the draft, objecting to its use of language drawn from Article 3 of the Geneva Conventions. 'He left bruised and bloody,' one Defense Department official said of the Pentagon aide, Matthew C. Waxman, Mr. Rumsfeld's chief adviser on detainee issues. 'He tried to champion Article 3, and Addington just ate him for lunch.'" But, if recent history is a guide, Bush will crack and cooler heads will prevail over Addington's bombast and extremism.

IN FACT, LIBBY'S resignation may be a bigger boon to Democrats than they realize. Addington is both more extreme and more politically tone-deaf than his predecessor. He and Cheney are the harbingers of bad times for Bush. When their names are in the news, political peril seems to follow. And, right now, Cheney and Addington, who abhor publicity, are the talk of Washington. The two men have top billing in the Libby indictment—Cheney as one of the people who told Libby that Valerie Plame worked for the CIA, and Addington as the man whom Libby sought out after reporter Judith Miller asked for more information about Plame. The men got a short reprieve Monday as the press focused on Samuel Alito's nomination to the Supreme Court. But, on Tuesday, the Senate Democrats' stunt (a closed-door session to force the chamber ahead on its investigation into the administration's use of prewar intelligence) pushed Cheney and Addington—who, naturally, are stonewalling the investigation—back into the public spotlight. The last five years have shown that it is a place where neither man thrives. ■

Alito's frightening geniality.

Nice Disguise

BY ANDREW M. SIEGEL

THE NOMINATION THIS week of Judge Samuel A. Alito Jr. to succeed Justice Sandra Day O'Connor set off a predictable scurry to divine what kind of justice he might make and, in particular, to decipher whether the judge commonly tagged "Scalito" would live up to that moniker. The verdict on the latter question was swift. After skimming his opinions and interviewing his friends and associates, nearly every source concluded that Alito and Justice Antonin Scalia share little beyond Italian-American heritage, Catholicism, and a conservative voting record.

In particular, those familiar with Alito stressed that his even-keeled temperament, collegiality, and lawyerly writing style distinguished his professional demeanor from that of the volatile, sarcastic, and often hectoring Scalia. The nearly universal conclusion was that Alito was less of a Scalia clone than some of the other federal judges considered for the post, most notably the rumored runner-up, Judge J. Michael Luttig.

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The implication of this conclusion was that liberals should breathe a sigh of relief, since Alito is no Scalia 2.0. The reality, however, is much more complicated. While Scalia's bellicose tone and general lack of civility have long been fodder for his left-wing critics, they have also served to hold back his judicial agenda, both by alienating potential allies within the Court and by marking his ideas as extreme in the court of public opinion. But Alito, who marries Scalia's conservative jurisprudence with tact, politeness, and a deferential writing style, is infinitely more dangerous to liberals. In Alito, they may have met their worst nightmare.

In 15 years on the bench, Alito has had opportunities to weigh in on almost all of the controversial constitutional issues facing the Supreme Court today—from abortion and the death penalty to the scope of federal power and the role of religion in the public square. The opinions that he has written in these cases share two essential characteristics. First, each is calm, rational, and well-written. Second, on virtually every significant issue where his conclusion is not mandated by direct Supreme Court precedent, the result is conservative.

These traits are notable in Alito's first major constitutional opinion, his partial dissent in *Planned Parenthood* v. *Casey*. In that 1991 case, Alito was one of three judges responsible for evaluating the constitutionality of a number of new abortion restrictions adopted by Pennsylvania, including a controversial spousal notification provision. Alito was the only judge who argued that the spousal notification provision passed constitutional muster (a conclusion ultimately rejected by the Supreme Court). But, in reaching that conclusion, Alito moved cautiously toward his bold result, carefully mustering quotations from O'Connor's various abortion opinions (ultimately using nearly two dozen different quotations from her abortion writings), debating countervailing evidence, and repeatedly downplaying the scope of his disagreement with his colleagues (at one point all but admitting that the case turns on how one interprets a single cryptic sentence in an O'Connor concurring opinion). Read in isolation, Alito's opinion gives the impression of a conscientious jurist doing his best to tame and apply difficult legal texts. The author's will is largely absent from the text of the opinion.

In a 1996 case challenging Congress's power to ban the possession of machine guns, Alito again faced a hot-button constitutional issue on which the Supreme Court's decisions were cryptic and in flux. The other two judges on the panel joined all of the other federal courts of appeals in rejecting the gun owner's challenge, but Alito dissented. Again, he parsed the relevant Supreme Court opinions in painstaking detail; again, he openly acknowledged and engaged countervailing evidence (for example, noting, with regard to the majority's central argument, that "I take this theory very seriously"); again, he played down the scope of his disagreement with his colleagues (by commenting that the majority "quite properly focuses its analysis" on a particular doctrinal point). And, again, he reached a boldly conservative result.

In recent years, Alito has honed his ability to write lucid, polite opinions reaching invariably conservative positions on a string of issues that have divided the current Court—from the scope of a capital defendant's right to the effective assistance of counsel during the penalty phase of his trial, to the breadth of governmental officials' immunity from liability when they inadvertently violate the constitutional rights of citizens, to the proper interpretation of the Establishment Clause. For example, in the 1999 case *American Civil Liberties Union of New Jersey* v. *Schundler*, Alito wrote an opinion for a divided panel evaluating the constitutionality of a Jersey City holiday display containing, among other things, a menorah, a crèche, a Christmas tree, and large plastic figures of Santa Claus and Frosty the Snowman. The heart of his opinion is an almost comically detailed dissection of the Supreme Court's relevant writings and their implications for this case. He notes, for example, that the display in one of the Supreme Court cases "included fewer religious symbols" than the one in Jersey City—a "menorah only" versus "both a menorah on the left side of City Hall and a crèche on the right." Along the way, Alito, as usual, finds time to acknowledge the aspects of the Supreme Court precedents that potentially cut against his argument before reaching the predictable conclusion that Jersey City's display does not violate the Establishment Clause. Whatever one thinks of the opinion's conclusion, it is hard to come away from it with anything other than affection for its careful and patient author.

Two lessons can be drawn from the substance and tone of Alito's appellate opinions. First, contrary to what many commentators want you to believe, the individual predilections and judgments of jurists have a substantial effect on the direction of U.S. constitutional law. While many legal questions can be resolved through a relatively straightforward application of reason to the relevant legal texts, most of the controversial constitutional questions that reach the Court are not susceptible to such simple resolution. When confronting such cases, judges are forced back—almost inexorably—to their own, often inchoate, ideas about human behavior, social policy, and the judicial role. For most Supreme Court nominees, we need to guess how these "priors" will shape their jurisprudence, but, for Alito, we have a long and consistent answer: He will tack hard to the right.

The second lesson is really a caveat about the first. With the opinions of most justices—particularly the savvy—it's hard for a reader to separate the application of legal sources and precedents from individual will. The norms of the legal profession push judges to ground their opinions directly in the legal sources, whatever the wellspring of their decisions. Those who are accomplished at this task have the ability to make even the most controversial result sound inevitable. In a substantial percentage of their cases, Scalia and Luttig

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eschew these professional conventions and lay bare their motivation. Alito never does. In many ways, the scrupulous fidelity of Alito's opinions makes him a more powerful advocate for his conclusions and a bigger danger to those who sport opposing legal or constitutional visions.

If Alito were to join the Supreme Court, his opinions would instantly gain a larger audience and a more central role in U.S. jurisprudence. Moreover, freed from the shackles of operating with a higher court looking over his shoulder, he would almost certainly expand his horizons. If one follows the little clues dropped (modestly) into his appellate opinions, Alito is brimming with ideas for pushing the boundaries of existing doctrine to the right in a number of crucial, albeit low-profile, areas, such as federal employment discrimination law, search and seizure law, and the rules governing the susceptibility of public officials to lawsuits.

In the end, however, if Judge Alito becomes Justice Alito, his greatest influence might stem not from his vote or his pen but from his collegiality. For more than three decades, efforts to assemble a consistent right-wing majority on the Supreme Court have foundered, at least in part because of personality conflicts among the conservative justices. To take the highest-profile example, as the history of the Rehnquist Court gradually comes to light, it becomes increasingly clear that Scalia's unwillingness to credit the intelligence and good faith of those who disagree with him took a particular toll on his relationship with O'Connor, potentially costing him a decisive vote to overturn *Roe* v. *Wade* and almost certainly costing him majorities in a slew of lower-profile cases.

Unless Alito undergoes a personality transplant if he enters the Beltway, it is literally impossible to imagine him demeaning the qualifications of a colleague, exasperating his fellow justices by hogging the spotlight at oral argument, or running his mouth off in a speech or a dissenting opinion to blow off steam. In his years on the Third Circuit, Alito's decency and civility have earned him respect across ideological lines. Recently, former colleague Timothy Lewis endorsed his Supreme Court candidacy and said that another colleague, the late Chief Judge A. Leon Higginbotham Jr., a notoriously hostile critic of Scalia and Justice Clarence Thomas, had also praised Alito.

If you are a fan of the justices who fought throughout the Rehnquist years to pull the Supreme Court to the right, Alito is a home run—a strong and consistent conservative with the skill to craft opinions that make radical results appear inevitable and the ability to build trusting professional relationships across ideological lines. If, on the other hand, you are a committed opponent of the Scalia-Thomas-Rehnquist agenda who has been carefully evaluating O'Connor's potential replacements with concern for the Court's future direction, Alito might be the most dangerous possible nominee. ■

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BOOKS & THE ARTS

STANLEY KAUFFMANN ON FILMS

Women's Worlds

NIKI CARO IS A NEW ZEALAND director whose last film, *Whale Rider*, was about a young Maori girl who insists on performing a ritual usually done by a man. Caro has now made a film in America, **NORTH COUNTRY**, which is about a woman who insists on taking a job that has usually been done by men. The similarity between these films signals a feminist director, and feminism certainly must influence Caro's mind, but what matters most about her is that she is a gifted filmmaker. A woman who comes from the other side of the globe has made a film in an American locale about a specific line of work and has done it all with the atmosphere acutely rendered. The place is northern Minnesota in the winter, in iron range country, and we can almost smell the flannel of the shirts that many of the characters wear.

NORTH COUNTRY
(Warner Bros.)

SHOPGIRL
(Touchstone)

The film grew from the fact that in 1975 a mining company was forced to hire a woman because of a judicial decision. The screenplay by Michael Seitzman, based on a book by Clara Bingham and Laura Leedy Gansler, is set fourteen years later and deals with a fictional woman who joins the small corps of women in the male-dominated work crew of a mining company.

To give that story its place of being, Caro has created this world starkly: we almost fight for breath in the cold air before we go into the mine. Caro is aided tremendously by Chris Menges, the English cinematographer (and director), who puts the gritty settings before us unsparingly and who finds the character in every face, the harshness in every slag heap. These verities of person and place sustain the eventually thinned-out story.

A young woman named Josey Aimes, played by Charlize Theron, leaves her husband because he beats her. With her two children, she goes back to her parents who live near a mine in which her father has worked all his life. After a poor-paying waitress job, Josey decides to work in the mine herself—for six times the money and also, as she soon finds, for a hundred times more pestering and affronts from the men she works with. Her female co-workers—there are not many of them—are used to the daily filth of the remarks and drawings, but Josey, though she is no plaster saint, has a tough time bearing these assaults that are palmed off as jokes.

She complains to the management, and at long last, after she has been pushed around both by workers and executives because of her complaints, she resigns in order to initiate a class action suit against the company. A sympathetic lawyer (Woody Harrelson) appears with filmland aptness, and the case goes forward. (Despite the revelations about Josey's past sexual life, of which the defense tries to make much.) While Caro is giving maximum reality to the world where all this happens, the screenplay dips into coincidence and heart-tug. The last courtroom scene was presumably conceived as a set piece meant to live in cinematic history and is accompanied by a score that practically declares it.

But the contrast between setting and story isn't all that bars *North Country* from fulfillment. The major trouble is Theron. She plays Josey as well as is needed, but she is simply too beautiful. Josey has to be attractive in order to make her past believable, but Theron doesn't fit the milieu that Caro has created. An advantage of looking like, say, Meryl Streep is that (as in *The Bridges of Madison County*) she can be truly attractive but also credible as a farmer's wife. Theron is more limited by her looks. In *Monster* a few years ago she played a roadside hooker who becomes a serial killer, and she was made up to look like the character. Here, though her face is smudged from time to time, she is almost always gorgeous, and we keep thinking that she is silly to fuss with mining when she could at least be a model, possibly a film star.

It's odd, indeed, that Caro, a director keenly observant of everything physical, did not insist that Theron look like the woman she plays. It seems almost a concession to male chauvinism, allowing the protagonist of this grimy drama to look so exquisite.

SHOPGIRL has been called a romance, but that is exactly what it is not. What gives it its distinction—not the same thing as stature—is the fact that, without romantic gavotte or tango, it merely follows a young woman for a while, noting the pleasures and the bumps in her life.

The screenplay by Steve Martin is based on a novella of his, and he plays one of the two leading male roles. Martin has acquired an aura of intelligence, despite his early "wild and crazy" act, much because of such comedies as *Dead Men Don't Wear Plaid* and *The Man with Two Brains* and the winning *Roxanne*. That intelligence flourishes in *Shopgirl*.

Mirabelle (Claire Danes) works at the glove counter of Saks Fifth Avenue in Los Angeles. A young man named Jeremy is attracted to her one day in a laundromat. He is a somewhat kooky fellow—frankly, even proudly, so. (Jason Schwartzman amply provides the kookiness.) She likes him, they become acquainted, and in time they go to bed. Then Ray Porter, a gray-haired man who is rich, comes into the shop one day, is attracted to her, and gently, suavely, persuades her to have dinner with him. She has no fixed arrangement with Jeremy, and in any case he has gone off for several months on a road trip with a rock group. Ray and Mirabelle begin an affair and see each other fairly often, usually at his luxe house. He explicitly states that he is not interested in permanence:

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they will see each other only as long as they both want to. She accepts. Then Jeremy, somewhat matured, returns from his road trip. The result is not dramatic crescendo but complication, which settles. Mirabelle goes on with her life.

One of Martin's best touches in the screenplay is that his character, Ray, speaks in decently modeled sentences with complete thoughts. Mirabelle and Jeremy, particularly he, speak in broken overlapping sentences, with jagged gestures to match. This difference in diction—almost a secret code—helps to link the younger two.

Danes plays Mirabelle with an air of acceptance: this is what life is for her, she seems to be saying, in this place at this time. Schwartzman displays Jeremy's oddities with such ease that we think the fellow sees himself as normal. Martin has the least inflected role, yet he manages to convey some dignity in Ray's pursuit of sex. But the best of the story is that there isn't much—as such. A slice of living is put before us. Some things happen. That's all. ■

Richard A. Posner

Our Incompetent Government

Terrorism, hurricanes, bird flu: can Washington really protect us?

I.

WHEN SOMETHING GOES wrong, we look for someone to blame, in the hope that by finding and punishing a culpable individual we can prevent a repetition. Sometimes this is little better than scapegoating, which is my reaction to the search for someone to blame for the failure to detect the September 11 plot or to discover that Saddam Hussein had abandoned his weapons of mass destruction. Intelligence failures, even ones that seem gross in retrospect (like the failure to anticipate Japan's attack on Pearl Harbor), are typically the result of the inherent limitations of intelligence rather than of culpable negligence. In the case of the botched response to Hurricane Katrina, however, it is easy to find culpable individuals at all levels of American government. This is fishing in a very well-stocked pond. Yet there is a danger that the excitement of the sport will cause systemic problems to be overlooked that may make the affixing of blame useless, except to vent indignation. For suppose there was never a reasonable expectation that the government would respond competently to Katrina. Suppose that the American government is incapable of dealing competently with certain distinctive challenges of modernity, including the challenge of catastrophe.

A hurricane, however fierce, might, like the Indian Ocean tsunami of last year, not seem a distinctly modern menace. But that is not correct. The economic, demographic, and technological changes associated with modernity have increased the probability, and in some cases the lethality, of certain types of catastrophe. Even if global warming is not a factor in the increasing virulence of storms (it may well be, but this is still uncertain), there is little doubt that the vulnerability of New Orleans to hurricanes has increased because of engineering and construction activities, and because of population growth. When Katrina struck, the city, already below sea level, had for many years been gradually sinking because flood control prevented the Mississippi River from depositing sediment to renew the subsiding silt that the city is built on. And the wetlands and barrier islands that provide some protection against the effects of hurricanes had been disappearing as a result, in part at least, of land development for commercial and residential purposes.

As another example, consider how the scale and the rapidity of modern global transportation have increased the risk of epidemics, such as the avian flu that is now feared, and how modern transportation and modern communications have facilitated both the organization and the concealment of global terrorist networks. Consider how advances in the technology of destruction may equip these terrorists, and outlaw nations (or even individual madmen), with a varied arsenal of weapons of mass destruction, including nuclear bombs, "dirty" bombs (conventional explosives coated with radioactive materials), poison gas, and biological weapons. To these should be added the possibility (analogous to the dirty bomb) of using conventional explosives as a triggering device for massive destruction. Had the New Orleans levees been destroyed by terrorists rather than by nature, there would have been no warning and therefore far greater loss of life.

The other way in which modernity exacerbates catastrophic risk is—paradoxically—by giving us tools for eliminating or mitigating risks that formerly had to be accepted in a spirit of fatalism. An example is the risk (far greater than most people realize, though small) of a disastrous asteroid strike. We now have the scientific competence to spot an impending asteroid strike years in advance and to deflect the asteroid from its collision course with the Earth. It is only when we have the tools to avert catastrophe that the issue of competence in their use arises. But the more tools we have, and therefore the more potential catastrophes that beg for our attention, the more dispersed and distracted our attention is likely to be. And so the more likely we are to be surprised and unprepared.

After the attacks of September 11, the entire nation—and not just a few voices crying in the wilderness, such as Richard Clarke, Gary Hart, and George Tenet—realized that powerful, far-flung terrorist groups were targeting

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the American mainland for attacks of unprecedented ferocity, perhaps utilizing weapons of mass destruction. So we knew that an American city might undergo at the hands of terrorists an attack that would render the city, or large parts of it, uninhabitable. And the experts among us knew that an effective defense against attacks, including "attacks" by nature, has four dimensions. They are threat assessment, or identifying vulnerable high-value targets; intelligence designed to identify impending attacks on those targets in time to prevent them (the National Weather Bureau is to hurricanes what the intelligence services are to terrorist attacks); measures to harden potential targets against attack; and all else failing, emergency response measures designed to minimize the losses from a successful attack or a natural catastrophe.

EVEN A SUPERFICIAL PROGRAM of threat assessment would have quickly identified New Orleans as a highly vulnerable high-value target for nature or for terrorism. And we could rely on the Weather Bureau for timely "intelligence" about the natural threat. The next question was whether to "harden" the target by strengthening the levees or taking other measures to reduce the likelihood of disastrous flooding. A study in 1998 estimated that New Orleans could be made safer against flooding caused by powerful hurricanes, at a cost of $14 billion, by restoring and sustaining Louisiana's coastal ecosystem. The Army Corps of Engineers had estimated an annual probability of almost one in three hundred of a disastrous flood, which mounts up to a near 9 percent probability over a thirty-year period. That is a high probability, but maybe not high enough to justify, in strict cost-benefit terms, a $14 billion expenditure that would have made New Orleans safer but not completely safe. Suppose the damage inflicted by such a flood were estimated at $200 billion; then, as a first approximation, preventive measures that reduced the probability of the flood from, say, 9 percent to 3 percent would not be cost-justified if they cost more than $12 billion (6 percent of $200 billion—the expected benefit of the investment).

Once it became clear that the $14 billion was not going to be spent—and in any event it would have been spent over thirty years, during which time the city would remain highly vulnerable to flooding—the emphasis could be expected to shift to the fourth type of protective measure: emergency response. Such a measure would be necessary in any case, since New Orleans, like any other American city, is a potential target of a terrorist attack that could cause massive human and economic damage without precipitating a flood. A biological, chemical, nuclear, or dirty-bomb attack could well require evacuation of the city with little or even no warning.

Of all the measures for dealing with catastrophic risk, the simplest and cheapest is planning the emergency response—not that the cost could be limited to the actual drafting of the plan. Some prepositioning of supplies (including vaccines and chemical-protection clothing) and equipment (including means of transportation) would be necessary, along with some expansion or improvement of escape routes, occasional or even frequent rehearsals of the plan, the creation of a backup communications network, and the creation of a standby staff to take control and direct evacuation or other response measures. In particular, since unity of command is essential in an emergency situation, one individual (not necessarily a federal official) would have to be designated to take command of all federal, state, local, and private entities in a position to respond effectively to the emergency. The plan would not only designate this individual and his staff, but it would also specify, again by analogy to the military setting, how the various responders would be deployed and supplied and how they would communicate with one another and with the commander. It would be a mobilization plan.

The emergency, if great enough, would have a long tail: the acute phase might end in days, but the reconstruction might take months or years. There would have to be a plan for that period, too. Were there no plan, so that the reconstruction had to be improvised, there would be enormous waste. In advance of any catastrophe, therefore, contingent contracts would have to be made with the various companies that would furnish essential goods and services for the reconstruction. An allocation of costs among different levels of government, and between government and the private sector, would also be necessary, and perhaps also compulsory insurance (for example, flood insurance in areas vulnerable to flooding) to lighten the cost to taxpayers.

II.

WE HAVE LEARNED SOMEthing important from the response to Hurricane Katrina. We have learned that four years after September 11, and two and a half years after the creation of the Department of Homeland Security, the federal government had yet to devise an executable plan for responding to a catastrophic event in New Orleans—or, I imagine, in any city in the United States.

This seems incomprehensible. The planning that I have just described would not be costly. It would not step on any big political toes. The need for emergency planning was not only obvious (a series of articles in the *Times-Picayune* in 2002 had explained the risk of a disastrous flood in New Orleans in detail); it was explicitly acknowledged at every level of officialdom. So why did nothing happen?

Some bad answers have been offered: the Department of Homeland Security worried more about terrorist attacks than about natural disasters; placing a federal official, especially a military person, in charge of emergency response would violate the principles of federalism. The first answer is bad because the kind of plan that I have described should have been prepared in order to deal with the aftermath of terrorist attacks, and would then have been available for natural catastrophes that had similar consequences. New Orleans would have been flooded whether the levees were breached by man or by nature.

The second answer—which drags in its train frequent references to the "Posse Comitatus" law enacted in 1878 to dramatize the end of Reconstruction by making it a crime to use the Armed Forces for law enforcement unless an Act of Congress expressly authorizes such use—is merely an excuse for inaction. An act of Congress known as the Stafford Act, passed in 1974, authorizes the use of the Armed Forces to help out in emergencies, and surely this help can include fending off looters. More fundamentally, in conditions of great danger legalistic limitations fall by the wayside. There is even an argument that, if interpreted to prevent the president from responding effectively to a major emer-

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gency, the Posse Comitatus law would be an unconstitutional limitation on sovereign power and executive prerogative. The Constitution really is not a suicide pact. No one, as far as I have been able to determine, has ever been convicted of violating the Posse Comitatus law.

As for the principles of federalism, they teach that government responsibilities should be pushed down to the lowest level at which they can be performed effectively—but not lower. If a terrorist attack or a comparable natural disaster paralyzes local government, spills across state lines, and for these or other reasons exceeds the capacity of local and state government to respond, then responsibility shifts upward to the federal government. The federal government must be prepared for such an eventuality. There are certain essential tasks that *only* the federal government can do.

WHY WAS THE PLANNING SO poor? Federalism complicates planning for operations that require coordinating all levels of government, but the complications should not have taken four years (and counting) to unravel. Two other explanations for the failure of planning can be set to one side as examples of sheer bad luck. One was the cuts in the budget of the Federal Emergency Management Agency (FEMA), the other was the retention in senior positions in the agency of persons of limited ability and experience. The first was a decision about priorities against a background of acute concern about a range of other dangers—a decision that looks unwise in hindsight but may have been sensible when made by officials not gifted with prescience. As for the quality of FEMA's management, the agency had responded adequately to the numerous routine hurricanes that it had encountered in previous years. Replacing its managers on the grounds that they would be incompetent to cope with a grand mal hurricane would have required rare clarity and courage; and it would have seemed high-handed and cruel, since such a hurricane was not anticipated.

Not anticipated—this brings us closer to the fundamental problem. A democratic government (perhaps any government) is incapable of anticipating and taking effective measures against novel threats. The threats do not have to be *really* novel; the fact that there was no recent example of a major American city being inundated was enough to put such a threat below the bureaucratic radar. The human mind finds it difficult to think in terms of probabilities, as distinct from frequencies, and often solves its difficulty by writing them down to zero. If an event is frequent, people expect it to recur. But if you tell them that something that has not occurred might occur and if it does occur it will cause great loss, they are unlikely to be impressed. Hurricanes are frequent, but Category Five hurricanes are rare. So it is the former for which the government prepares.

Politicians or their advisers may know better, but politicians have limited horizons. Probabilities are relative to the interval over which they are computed, as in my example of the probability of a disastrous flood in New Orleans: the probability was much greater over a period of thirty years than over a period of one year. Few politicians are looking forward to thirty years in office, so they have little incentive to support measures that may be cost-justified only if the horizon of concern is pushed out that far from the present. Their motto is, sufficient unto the day is the evil thereof. Policy myopia is built into democratic politics.

A RELATED PROBLEM IS THE pressure of the immediate. Officials are continuously harassed by members of Congress, by the media, and by White House staff to deal with the crisis du jour. They are not given the leisure to address future contingencies. A further impediment is rapid turnover, as officials cycle between public sector and private sector jobs. The "revolving door" is most commonly criticized as a form of soft corruption. That is not the serious problem. The serious problem is the lack of continuity in the management of government, and the consequent foreshortening of the planning horizon. An official who spends only two years in a job is unlikely to be worrying about what may happen (but more likely will not happen) decades hence. He will receive no current reward from planning to deal with contingencies, however ominous, that seem to lie in the remote future.

Another significant factor in the incompetence of American government to deal with long-term risks is cultural. Americans are not fatalists. They accept, because it is a conventional notion, that national defense requires reserve forces and standby resources such as manned

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missile silos, but they would find it difficult to understand the use of government funds to establish a standby disaster command whose members sit around playing cards while awaiting Seattle to be engulfed in a volcanic eruption by Mount Rainier or New Orleans to be inundated by a storm surge. Americans simply do not accept the inevitability of disaster.

And then there is the immature political culture that has given us the Department of Homeland Security (DHS) in its present form. The creation of the department in 2003 was among a number of responses to the need to "do something" in the wake of September 11 (and another example of Americans' inability to accept the inevitability of disasters). Some of these responses, such as the much-maligned Patriot Act and the invasion of Afghanistan, made sense. One that did not, and that parallels the creation of the Department of Homeland Security, is the re-organization of the intelligence system decreed by the Intelligence Reform and Terrorism Prevention Act of 2004 in response to the report of the 9/11 Commission. It was based on the notion that the way to make government agencies work is to slot in another layer of bureaucracy on top of the existing set of agencies. This is governance by cheap, showy gestures. The effect is to impose heavy transition costs, demoralize the component agencies by demoting them, intensify turf warfare (a debilitating constant of government) by giving previously independent agencies a common boss for whose favor to vie; impede policy-making; delay, deplete, and garble the flow of information to the decision-making level; slow response time; and diminish professionalism by pushing decisions to a higher political level. The added bureaucratic layer is a fog that obscures the view both from below (the subordinate agencies) and from above (the lofty superiors).

The creation of the Department of Homeland Security followed a similar pattern. The need for coordination of the numerous agencies responsible for protecting the nation's borders, and of the agencies responsible for dealing with catastrophes, whether natural or man-made, did not justify placing twenty-two agencies, including FEMA, in a new department, centrally managed, hierarchical, with information flowing upward from the brontosaurus's tail to its tiny head (a handful of people, albeit some very able ones, trying to control 183,000 civil servants), and a response groping its way back down. With the department's formation, FEMA, included in it for obscure reasons, was demoted, losing much of its perceived importance. Appointments to its senior managerial jobs could now be used to pay small political debts—and for the further reason that emergency response, though a challenging specialty, is not a formal profession like medicine or law, so that there is a less definite sense of the proper credentials for the officials.

Now FEMA had to stand in line, waiting its turn for the attention of the beleaguered secretary of Homeland Security, who was struggling to assert control over his far-flung domain. A plan formulated by FEMA for responding to large-scale catastrophes would have to be approved not only by the White House (which has its own Homeland Security Council, whose role in the response to Hurricane Katrina remains obscure), but also by the secretary of Homeland Security and the White House. And the secretary was unlikely to be an expert in emergency response, given the breadth of his responsibilities. So when disaster struck, the head of FEMA, an embarrassing amateur in emergency response—in part because the job was no longer considered very important, the agency having dropped a rung in the hierarchy of government agencies—had to consult a higher official, who was another amateur in emergency response. There were too many cooks stirring the broth.

Congress created the Department of Homeland Security, and is supposed to oversee its creations. It has not done so. (And we can be certain that the congressional investigations of the debacle will not point the finger at inadequate congressional oversight.) The Senate has confirmed unqualified nominees to critical management positions, and the monitoring of the department's activities by both houses has been so lax that apparently they failed to notice that the department, despite its title, had no plan (except the abstract rhetorical shell grandly named the "National Response Plan") to deal with the aftermath of catastrophe. DHS Secretary Michael Chertoff acknowledged candidly that the department had not anticipated an "ultra-catastrophe." One might have expected the congressional homeland security committees, with their large staffs, to have noticed this planning deficit, were it not for the fact that our government is incapable not only of dealing with what is merely probable but also of creating rational bureaucratic structures. It is astonishing to learn that eighty-eight congressional committees and subcommittees share the oversight and appropriations responsibility for the Department of Homeland Security.

On the principle that in politics the word "truth" is a synonym for "blunder," Chertoff has been criticized for stating the truism that, other things being equal, fewer resources should be devoted to preventing a terrorist attack that kills thirty people than to preventing one that kills three thousand. The criticism reflects the incapacity of our political class, and not just of the general public, to think in cost-benefit terms. For want of such thinking, we are busy squandering untold billions of dollars to rebuild New Orleans in time for the next flood, an expenditure of conscience money for the government's failure to have responded competently to the hurricane. We cannot even waste money efficiently. Instead of giving the displaced persons cash and letting them decide where and how to live, the government is buying them their housing and thus telling them where and how to live.

Underlying the systemic problems that I have identified is the overextension of the federal government. It is trying to do too much. In the face of formidable challenges to the safety of the nation, of which we have had an abundance of recent warning signs—the latest being the threat of a lethal flu epidemic with which we apparently are not prepared to cope—the government has entangled itself in contentious, emotional, and (it seems to me) distinctly secondary issues. Matters such as abortion, fertility treatments, homosexual rights, affirmative action, religious displays on public property, capital punishment, voluntary euthanasia, and the proper treatment of people in vegetative states are not appropriate issues to engage the federal judiciary, or the other branches of the federal government. (All three branches managed to get involved in the Schiavo affair.) They are not worthy problems for *national* government in a federal system. The regulation of abortion only became a subject of heated

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contention when it was nationalized by the Supreme Court in *Roe* v. *Wade*.

Federal investigations proliferate. Judicial confirmation hearings become distended and absurd. The federal government continues its quixotic campaign of trying to prevent people from consuming an arbitrary subset of mind-altering drugs. It operates massive programs of re-distributing wealth arbitrarily, mainly to elderly people, many of whom could pay their own way quite nicely. It sponsors space travel, something the private sector can do perfectly adequately. The proper business of a national government is none of those things. It is public safety, which is gravely endangered, and which our government, and our political system, excited and distracted by a bewildering variety of second-order concerns, seems incapable of taking rational measures to protect. ■

David J. Rothman and Sheila M. Rothman

Race Without Racism?

RACE TO THE FINISH: IDENTITY AND GOVERNANCE IN AN AGE OF GENOMICS
by Jenny Reardon
(Princeton University Press, 237 pp., $17.95)

ONE MIGHT HAVE ANTICIpated that in the aftermath of World War II, and the near-universal rejection of Nazi eugenic theories, the concept of race would have been totally discredited and gladly abandoned by all disciplines. But the history of the idea turns out to be remarkably different. Although still associated in the popular mind with a murderous ideology, in science and medicine the category of race has not merely survived, it has flourished. In this post-human genome era, it serves as an essential organizing concept for research and presentation of data. How race managed to overcome its past, why it continues to be used, and what the implications are for both science and society, are the subjects of Jenny Reardon's smart, informative, and aptly titled book. Every generation, it seems, is destined to do battle with the meaning and the relevance of race, and her account of the short, unhappy history of the Human Diversity Project makes clear that we are no exception.

Why did race survive in the immediate aftermath of the Holocaust? The answer is that biologists in the 1950s and 1960s insisted that the concept was indispensable to their work, and they were fully confident that they could assign peoples to races without being racist. They scrupulously differentiated their work from pseudo-scientists who used race to create hierarchy (Aryans at the top, Jews and Gypsies at the bottom), and to posit innate human differences (Germans as vigorous, Jews as diseased). From their perspective, all species, of which homo sapiens were one, were composed of races—that is, reproductive communities that generated common traits among their members. Only by acknowledging race and analyzing its formation could investigators understand human variation and evolutionary processes. Race was the indispensable tool for tracing the dynamics of human evolution and diversity. What could be less racist than that?

Two well-known UNESCO Statements on Race, one written in 1950 and the other in 1951, exemplified the approach. Historians have usually celebrated the documents as marking the end of racial theories and racist science. Reardon offers a more nuanced view. The UNESCO Statements, particularly the 1951 version, reflected and re-inforced the idea that race was an essential component of genetic research. Race allowed geneticists to analyze inherited differences within a species by focusing on the frequency with which given traits appeared within populations or races (they used the terms interchangeably) that were geographically isolated. As the anthropologist Ashley Montagu, one of the drafters of the UNESCO statements, declared, racial groupings facilitated the study of the "relative differences in the frequencies of genes." He and others went on to assert that these statistical measures of frequency did not imply the innate superiority of any particular group or trait. Distributions of genes were random, with no hierarchical distinctions. You could have race without racism.

RACE WITHOUT RACISM WAS the approach that dominated the postwar decades. Carleton Coon, the anthropologist who was so fierce a proponent of innate racial differences that some colleagues considered him racist, defended the UNESCO position on the grounds that the "no-race school ... ignores natural selection, which screens the passage of genetic traits from one race to another." To presume that races did not exist was to act "as if Darwin had drowned on the voyage of *The Beagle*." His more esteemed colleague, Theodosius Dobzhansky, one of the founders of the field of population genetics, elaborated the position: "If races have to be 'discrete units,' then there are no races." More, if races are divided only by visible physical characteristics, such as skin color or hair texture, then the concept is meaningless. But race had another meaning: "Races arise chiefly as a result of the ordering of the genetic variability by natural selection in conformity with the environmental conditions in different territories." In other words, "Variability precedes race and serves as a raw material for its formation." Race was derived from variation, and was not an a priori explanation for variation.

Still, could the concept of race be invoked without buying into a racial hierarchy and judging some traits to be superior to others? Biologists doggedly insisted that the answer was yes, and to further buttress their position they argued that not all members of a given race were "equal in endowment." The second UNESCO Statement on Race carefully distinguished between intra-group and inter-group differences: "It is possible, though not proved, that some

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types of innate capacity for intellectual and emotional responses are commoner in one human group than another, but it is certain that, within a single group, innate capacities vary as much as, if not more than, they do between different groups." So even if it turned out that one race was more intellectually gifted than another, no one need be concerned, because any given individual from another race could be just as intellectually gifted.

The most powerful and influential statement of this position came from Richard Lewontin, an evolutionary biologist at Harvard and a former student of Dobzhansky. In 1972, in his classic article "The Apportionment of Human Diversity," Lewontin used the new technology of protein electrophoresis to analyze the proportion of genetic variation that could be accounted for by differences between racial groups and individuals within the groups. By demonstrating statistically that within-group differences in the human species were greater than between-group differences, Lewontin concluded that traditional groupings of race accounted for a very small proportion of genetic variation (approximately 6 percent) and individual differences within a racial group were considerable (85 percent).

Lewontin believed that his finding demonstrated that "human racial classification is of no social value and is positively destructive of social and human relations." But most of his peers were comfortable using race as an analytical category and measuring differences between races, provided that they always remembered to make two qualifications: no race or inherited trait was better than any other, and any one member of a race might be less like other members of his race and more like members of other races. However dreadful the past abuses, race was a biological fact.

TAKING OFF FROM THIS POSITION, population geneticists in the 1950s and 1960s were eager to study isolated populations, the more geographically remote, the better. Modeling their research on Darwin's studies, they were convinced that people residing in such places would provide valuable clues for understanding human evolution, population movements, and race formation. Indeed, they worried that if the task was not quickly accomplished, the groups would disappear. As Dobzhansky wrote in 1950, "Because of the rapid development of communications even in the most remote corners of the world, and the consequent mixing of previously isolated tribes, such investigation cannot be long postponed ... our generation is the last one which can still secure data of momentous significance for the solution of the problem of the origin of human races."

Although his generation did not make much progress toward meeting the goal, the creation of the Human Genome Project in 1990, and the considerable financial and intellectual investment that went into mapping the human genome, breathed new life into the agenda. In the summer of 1991, as Reardon explains, a group of population geneticists proposed "to sample and archive the world's human genetic diversity." The DNA of geographically and technologically isolated populations in the Middle East, Asia, and Africa represented, as one organizer noted, "rare and valuable resources to study human origins and patterns of population genetics." As Luca Cavalli-Sforza, a preeminent population geneticist and one of the originators of the project, declared: "The populations that can tell us the most about our evolutionary past are those that have been isolated for some time, are likely to be linguistically and culturally distinct, and are often surrounded by geographic barriers." These "vanishing populations" might disappear before science could gain knowledge about the evolutionary process from them, enrich our understanding of race formation, and enable us to better understand and treat a variety of diseases.

THE PROPOSAL QUICKLY WON support from the NIH, and the organizers anticipated launching the Human Genome Diversity Project in 1994. But to their astonishment, the project was bitterly attacked for a number of reasons, of which scientific racism was the most fundamental and damaging. Population geneticists may not have had difficulty with the idea of race, but a number of indigenous populations certainly did. The Diversity Project died a slow death over the next several years, and although parts of its mission have been taken over by other projects, Reardon's intellectual autopsy of the enterprise is very much needed.

The sources of the problem, Reardon shows, had nothing to do with the reputations of the project's leading proponents. They carried impeccable credentials, and not only in science; they were active and energetic defenders of human rights. The geneticist Robert Cook-Deegan had conducted investigations for Physicians for Human Rights on health conditions among Kurds in Iraq. Mary-Claire King, who helped identify the BRCA1 breast cancer gene, had used genetic techniques to help unite grandmothers with grandchildren who had been kidnapped by the military during Argentina's Dirty War. Cavalli-Sforza had exposed William Shockley's gross misuse of IQ data and race. They were assuredly not greedy investors trying to exploit the DNA of "primitive people" for their own financial gain. "It will be essential," they made clear from the outset, "to integrate the study of peoples with response to their related needs." They did not intend to "sample and run."

And yet objections and anxieties about the project quickly surfaced. The earliest salvos came from anthropologists who were rankled at their exclusion from the project and deeply troubled by its conceptual orientation. Their first line of attack was on the presumption that collecting and analyzing the DNA of seemingly intact and isolated populations would help explain human diversity. From their perspective, sampling DNA without taking into account complex cultural factors such as group adaptation and structure reduced human experience to a genetic process. What was at stake, as Reardon explains, was not "just questions about how nature should be understood, but also about how societies and cultures should be ordered, for whom, and to what ends."

The anthropologists were also disturbed by the labels the project applied to populations. After hearing Cavalli-Sforza discuss its approach, one of them observed that he had used the term "ethnic group" to refer to European populations and "tribes" to refer to Africans. Was there not an implicit condescension, or even racism, here? In this same spirit, one of the project's early drafts explained that the populations to be sampled would be sufficiently isolated so that the chances of "miscegenation" would be reduced. In using such a term, was science still mired in racist thinking? As one critic concluded, the project represented "21st-century technology applied to 19th-century biology."

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EVEN MORE VEHEMENT PROTEST came from the very groups who were to be the objects of the research. No sooner was the project announced than indigenous rights organizations charged that it threatened their identity and autonomy and demanded that it be halted. These advocacy groups owed much of their existence to the controversies that followed on Western efforts to collect and to analyze plants and medicines found only in remote countries. The fear was that the outsiders would steal native plants, patent their active agents, reap profits, and give nothing back to their rightful owners.

Whatever the accuracy of the charge—it was not without some basis—the organizations moved rapidly and predictably from seeds to genes. One of the most aggressive opponents was the Rural Advancement Foundation International (RAFI), whose mission in the 1970s had been to protect the interests of small farmers from exploitation. RAFI was convinced that the Diversity Project was up to the same trick: take the DNA of indigenous populations for the use and gain of others. It was a "Vampire Project," whose goal was "biocolonialism."

The objections were fueled by more than a seed-gene linkage. The Diversity Project could not escape the dark side of race. A clash may have been unavoidable: research does not have a good name among vulnerable populations. When the record ranges from depriving American blacks in the 1950s of access to penicillin so that untreated syphilis could be studied to depriving African blacks of anti-retroviral therapy so the untreated course of AIDS could be studied, there are good reasons to be suspicious of white people carrying syringes and needles to collect blood. But it surely did not help that the Diversity Project organizers were tone-deaf. To them, the inclusion criteria for populations to be studied were neutral; they could not grasp what it meant to the populations to be described as "vanishing," or about to "disappear," or "isolates of historic interest." Viewed by the populations themselves, the researchers were re-creating racial hierarchies. The rich and powerful north was permanent; the south was transient. The one was integrated, the other was isolated. Who gave Western science the authority to define, and to marginalize, certain populations? The question served as a highly effective rallying point for an international campaign that urged "all groups and individuals concerned with indigenous peoples' rights to mobilize public opinion against the case of human communities as material for scientific experimentation and patenting."

Facing this objection, the Diversity Project responded with proposals to invigorate the consent process. They would set up ethics committees among the groups so that there could be a collective as well as individual agreement to the research protocol. But it was too little, too late. The issues went beyond group consent to group identity. Biologists could not have their way with race, no matter how well-intentioned they might be.

REARDON CLOSES HER STORY by observing that there is still no consensus on how, when, and to what ends race should be used—or, in still broader terms, "what defines human identity at the level of the genome." But even in the absence of such consensus, it should be added, racial categories are entrenched in genetic research, and pervade scientific and medical journals. Take the example of Ashkenazi Jews. Only a few years ago, the term was relatively obscure to anyone outside the group; now it is common in breast cancer literature. "AJ" is a well-known medical acronym in publications and medical charts, and medical residents will begin a presentation on rounds with the phrase: "This 45 year old, well-nourished, Ashkenazi Jewish woman...." Similarly, the first race-based drug, Bidil, has been approved by the FDA to treat heart failure in African Americans. Just a few years ago residents were warned never to begin a presentation with: "This is a forty year old black man...." But with Bidil in the pharmacy, this caution no longer holds. Since racial categories are arguably helpful in diagnosis and treatment, their use is being vigorously defended. Francis Collins, head of the Human Genome Project at the NIH, is one of many who justify applications of racial categories on pragmatic grounds: they are a convenient tool for exploring the genetic origins of disease. The most frequently cited example is the link that has been forged between Ashkenazi Jews and breast cancer.

So race is surely not finished. But its staying power does not come with conceptual clarity or consistency. In an overview of the "biogeography of human populations" that appeared in *Nature Genetics* in November 2004, two geneticists argued that racial categories are "inadequate descriptors" of genetic variation in populations, and that obvious physical markers such as skin color "are not always good indicators of race," nor are particular language or cultural patterns. Yet they immediately dismiss the idea that race is "biologically meaningless" on the grounds that "the lay person will ridicule that position as nonsense, because people from different parts of the world look different." There are five races, they assert, and each corresponds to a geographic region (Africa, Europe, East Asia, Oceania, and the Americas). Not unexpectedly, having reified race, they caution against using it for purposes of discrimination, although in terms so odd that they are worth quoting: "Statements like 'We hold these truths to be self-evident, that all men are created equal' ... reflect morality, not science. One can accept this moral imperative and still recognize that all individuals, independently conceived, are genetically unique," that is, not equal.

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What can we learn from all this? Not much about race, but a good deal about science and race. As Reardon rightly concludes: "Struggles over the meaning of race and racism are at once contestations over who has the expertise needed to represent the truth about human diversity in nature, and contestations over who has the authority to create just representations of human diversity in society." The answer does not rest with the expertise or the authority of science. Science is a part of the problem, not the solution. ■

Emily Wilson
Sparrows and Scrubbers

THE POEMS OF CATULLUS: A BILINGUAL EDITION
Translated by Peter Green
(University of California Press, 339 pp., $24.95)

PETER GREEN, AN EMINENT historian of the ancient world, is one of the best translators of classical poetry in our age. He has done the definitive modern Juvenal, and his version of Apollonius of Rhodes's dense, allusive epic poem *The Argonautica* actually makes it enjoyable to read. His translations of Ovid's elegiac poetry are probably his masterpiece as a translator. He manages to re-create Ovid's verbal fluency and lightness of tone in a convincing English equivalent of Latin elegiac meter. Green's Ovid, like the original, is always readable, always clever, and frequently offensive. He has now produced a translation of the complete poems of Catullus, with facing Latin original and extensive notes. It is a superb piece of work, despite some disappointments. Green's translation should encourage readers of all kinds to read or re-read Catullus, one of the greatest and most influential of all classical poets.

Born in the provincial northern town of Verona sometime around 84 B.C.E., Catullus died in Rome, possibly of consumption, about thirty years later. He was an inspiration for the Augustan poets of the subsequent generation: Horace, Virgil, Propertius, and Ovid all look back to his work. So do many later European and American poets: Catullus's sparrow poems, for instance, have inspired many English imitations and acts of poetic homage, from John Skelton's remarkable poem "Phyllyp Sparowe" (written around 1500), to Carol Muske-Dukes's collection *Sparrow* (2003).

Catullus came from a wealthy family; unlike Virgil and Horace, he seems to have had no need to cultivate a rich patron to support him while writing poetry. His father was friendly with Julius Caesar and often invited him to dinner. Catullus wrote several vicious attacks on Caesar, which suggest that his military campaigns in Britain and Gaul are being criminally mismanaged by his chief engineer Mamurra, and that they are motivated by revolting avarice and greed on the part of Caesar himself, who is a "voracious/and shameless gut." Catullus also sneers at Caesar's bisexual promiscuity: "They're well matched, that pair of shameless buggers,/Bitch-queens both of them, Caesar and Mamurra" (Green's translation).

According to Suetonius, Caesar complained that a "permanent blot" had been put on his name by these poems, but "when Catullus apologized, Caesar invited him to dinner that very day." This anecdote could be taken as a sign of Catullus's socially privileged position: as the son of Caesar's friend, he was able to be extremely rude about the most powerful man in the world, and get away with it. But it can also be taken to prove Caesar's literary taste. He knew a great poem when he read one, even if it included slander against himself.

It is disturbing to remember that the poems of Catullus might well have been lost to us forever. The classical authors whose work was part of the Byzantine school syllabus, such as Virgil and Cicero, were read and copied many times over, from late antiquity to the Middle Ages. But the poems of Catullus were not a school text, for obvious reasons. Catullus is not an improving author. Our knowledge of Catullus's work depends on a single manuscript, which was discovered in a monastery in Verona, Catullus's hometown, around the year 1300, copied twice, and then lost again. As a result, the text of Catullus is far more difficult to reconstruct accurately than that of more consistently canonical authors. Even the order of the poems—which, in this text, are grouped in three sets ("polymetric" lyrics, then long poems, and then short elegiac poems)—may or may not reflect the poet's own arrangement.

IF CATULLUS'S WORK HAD BEEN lost, it would not have been possible to imagine it. He is a poet of dazzling virtuosity and range. As well as his satirical attacks on Caesar and other acquaintances, he also wrote about sex, marriage, friendship, poetry, travel, loss, anxiety, nature, castration, mythology, and religion. He did so in many different meters, with self-conscious precision and verve.

Catullus wrote less than Ovid, but his work is extraordinarily varied: it is difficult for any translator to capture every Catullan mood equally well. Green is least successful when Catullus is tender and emotional, neither ironic like Ovid nor angry like Juvenal. When the poet mourns for his dead brother in the beautiful poem 101, Green becomes oddly stiff: "fortune, alas, has bereft me of your person,/my poor brother, so unjustly taken from me." The archaisms here read like old-style Loeb translationese, unworthy of Catullus and unworthy of Green.

Yet Green's affinity for Catullus as a wit and as a bad-boy satirist is very deep, and it allows him to bring out a side of the poet that has often been neglected. Those who concentrate on the Lesbia poems may be tempted to see Catullus primarily as a poet interested in love, sex, betrayal, and emotional conflict, the poet of "*odi et amo*" ("I hate and I love"). Green offers a convincing incentive to move away from a vision of Catullus as the intense young man in Yeats's poem "The Scholars," whose lines were "rhymed out in love's despair" only to be misunderstood by dry-as-dust scholars. Green's Catullus is more a hate poet than a love poet. He is macho, self-pitying, cruel, technically masterful, and supremely funny.

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One of Green's greatest strengths is his equanimity about the poet's obscenity, which he sees as a sign of "youthful panache," a "characteristic upper-class Mediterranean phenomenon," "singular only in its oral obsession." Green assumes, I think rightly, that the dirty words in Catullus would have seemed less shocking and less interesting to his original readers than they do to us. His translation follows through on this insight. When Catullus hurls insulting threats at those who have dared to criticize his work—*pedicabo vos et irrumabo!*—Green makes the line sound as if it comes from an over-heated primary school argument: "Up yours and sucks!" More literal translations, such as Guy Lee's "I'll bugger you and stuff your gobs," sound too bizarre to be funny.

As an example of the liveliness and the vigor of Green's translation, here is one of Catullus's most famous poems (poem 2, *Passer, deliciae meae puellae*), in which the poet envies his girlfriend's pet bird.

Sparrow, precious darling of my
sweetheart,
always her plaything, held fast in
her bosom,
whom she loves to provoke with
outstretched finger
tempting the little pecker to nip
harder
when *my* incandescent longing
fancies
just a smidgin of fun and games
and comfort
for the pain she's feeling
(I believe it!),
something to lighten that
too-heavy ardor—
how I wish I could sport with you
as she does,
bring some relief to the spirit's
black depression!

Catullus's choice of pet for his girlfriend clearly had a literary motive. Sparrows in real life are more or less untameable, but they are the birds that draw Aphrodite's chariot in Sappho's first poem, to bring her to the poet in times of trouble. Lesbia, it seems, is like a Sapphic goddess of love, but one who is not going anywhere. Catullus draws on a frivolous Hellenistic tradition of hymn-like poems addressed to the most insignificant members of the animal kingdom, such as the locust and the cicada; but he uses this trivial sub-genre to evoke serious emotions—longing, alienation, melancholy.

The sparrow seems at first to have usurped the place Catullus wants for himself: the girl holds him in her "bosom" (the word *sinus* can also mean "lap" or "vagina"). The relationship of girl and bird is vaguely sexual. Green's use of the word "pecker" is a brilliant hint at the fact that *passer* in Latin, which means "sparrow," was also a slang word for "penis." Catullus was presumably conscious of this double entendre, although it is a simplification to regard it as the key to the whole poem (as many critics have done). By the end of the poem, it becomes clear that Catullus envies the girl as much as the bird. Although the poem seems at first to be about a comic love triangle, man, woman, and bird, it concentrates finally on two incompatible experiences of desire and pain: the girl can find comfort and relief from a plaything, but the speaker cannot.

It is possible, too, to see the poem itself as Catullus's own sparrow: poetry is a game, which may or may not offer the poet consolation in times of suffering. A meta-poetic interpretation is suggested by later Roman imitations of Catullus's sparrow poems by Ovid and Martial. Green's version manages to capture both the poem's charm and its complexity of tone. Like Catullus himself, Green mixes high diction ("bosom," "ardor," "spirit") with lively colloquial language. "The pain she's feeling (I believe it!)" is characteristically vigorous.

One of the best translations of the complete Catullus before Green was the impressively laconic verse rendition produced in 1990 by Guy Lee. Like Green, Lee includes the Latin text facing his English; like Green, he aims for a line-by-line equivalence to the Latin. But the feel of his Catullus is very different. Here, for comparison, is his version of poem 2:

Sparrow, my girl's darling,
Whom she plays with, whom she
cuddles,
Whom she likes to tempt with finger-
Tip and teases to nip harder
When my own bright-eyed desire
Fancies some endearing fun
And a small solace for her pain,
I suppose, so heavy passion then rests:
Would I could play with you as she
does
And lighten the spirit's gloomy cares!

Lee's version is in some places further from the Latin than Green's: "cuddles" is less literal than "held fast in her bosom," and to my ear sounds a little too infantile for this quasi-erotic embrace. But sometimes Lee is closer. "So heavy passion then rests" is, like the Latin original, almost impossible to understand, whereas Green has diverged further from Catullus in the attempt to make his version intelligible. Green has obviously borrowed a little from Lee: "to nip harder" is a shared phrase.

Perhaps the most important difference of technique between the two translations is that Lee relies heavily on English cognates of the Latin words that he translates: "small solace" for the diminutive *solacium*, "cares" for *curas*, "desire" for *desiderio*. In Green's version, by contrast, *solacium* becomes "just a smidgin of ... comfort," *desiderio* is "longing," and *curas* are "depression." One could complain that "smidgin" is a dated colloquialism, and that "depression" suggests a modern concept of mental health that would have been unfamiliar to the ancients. But it is also true that the Romans did not use Latinate language. They used Latin, which was not always a dead language. Latinisms in English often sound stiff and over-educated; there is no reason to think that Latin always felt this way to the Romans. Green is always anxious to find a modern English equivalent, rather than parroting the original with descendents of the Latin words. If he uses a Latinism (such as "incandescent," or even, in poem 5, *ad infinitum*), it almost never mimics the Latin of the Latin.

Classicists sometimes complain that Green is a "free" translator, because he occasionally glosses or skips references that the average modern reader might find obscure, and because his versions are racier, slangier, and more fun to read than most of their competitors. Readers who want a more straitlaced Catullus may be happier with G. P. Goold's unpretentious and clear translation, which appeared in 1983, or with Lee. But it is a mistake to think that more vanilla versions of Catullus, or indeed any classical poet, are necessarily more faithful to the original. A translator who tries to find "neutral" language—as if there were such a thing—may take a greater liberty

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with the original than one who casts his linguistic net as wide as it will go.

LITERALISM BRINGS ITS OWN distortions. Consider, for example, the first words of Catullus's *libellus* (little booklet), as rendered by the Loeb translator F. W. Cornish: "To whom am I to present my pretty new book, freshly smoothed off with dry pumice-stone?" This rendering is perfectly accurate. It conveys the general gist of the lines; every word in the original is translated; there are no obvious interpolations of extra material. It would do well as a crib to help those with nascent or rusty Latin struggle through the original. What it does not do is give any indication of what the original feels like. The Loeb translation is not poetry, or even verse. It does not convey Catullus's stylistic carefulness, his wit, his comic self-deprecation, or his consciousness of Hellenistic literary antecedents—all of which are apparent in the Latin. "Literal" translation may make Catullus sound like a clumsy writer.

There are many conventional metaphors for translation that make it sound fairly straightforward. Translators are often said to "carry over" a piece of work from one language to another, or dress it up in new clothes, or pour it into a new vessel. They must choose, in the Ciceronian cliché, between translating "word for word" and "sense for sense." But translation, perhaps especially the translation of poetry, is never really so simple. Meaning, form, and language are intertwined. A poem belongs to the culture in which it was produced; sense is not separable from particular words, their rhythms, their connotations, their history.

One approach to this fundamentally insoluble problem is to try to produce a version that is as lively as the original, even if this means importing concepts that are obviously modern and unclassical. Sir John Denham, the seventeenth-century poet and classical translator, convincingly remarked that a poetic translator's business is not merely

> to translate Language into Language, but Poesie into Poesie; and Poesie is of so subtile a spirit, that in pouring out of one Language, into another, it will all evaporate; and if a new spirit be not added in the transfusion, there will remain nothing but a Caput mortuum, there being certain Graces and Happinesses peculiar to every Language, which gives life and energy to the words.

Green transfuses a new spirit into his versions of classical poetry, and so he allows his readers to intuit something of the spirit of the original, in all its alien complexity. Reading Green, I often want to quibble with his choice of words or phrasing, and I sometimes mourn the loss of specific allusions and proper names. But even the sense of niggling discomfort is itself an invitation to think harder about the original, and about the process of cultural and linguistic translation. Green never allows his readers to be passive. He involves us in his own attempt to give spirit and imaginative life to a modern English Catullus.

GREEN'S TRANSLATION SHOULD come with a mild caution: it will be most valuable to those who can read even a little of the original Latin. His modernizing glosses will be sometimes hazardous for those who read only the right half of the page. In poem 64, *Zephyrus* is translated as "the west wind." One argument for this kind of gloss is that *Zephyrus* would have been immediately comprehensible to any Roman reader, whereas a modern student may be left mystified by it, or forced to scrabble through the notes. But if ease of comprehension is gained, many connotations are lost. "Zephyr," unlike "west wind," suggests that nature is magically alive. It matters, too, that Catullus uses the Greek name rather than the Latin equivalent, *Favonius*: the poem evokes a lost Greek world. Moreover, translating *Zephyrus* as "Zephyr" would have allowed those unfamiliar with the name to learn it, and thereby expand their imaginative horizons.

But Green's willingness to look for modern equivalents for classical terms is almost always enriching for a reader who looks across the page to the Latin original. The absences help one think harder about why the allusion was there in the first place, and sometimes bring home the impossibility of finding parallels in our own language for the specifics of Roman culture. In poem 27, vintage Falernian wine becomes "vintage *vino*." Falernia was a region that produced strong, expensive, and highly regarded wines, praised by Horace, Pliny, and others. "*Vino*" is a good choice insofar as it suggests a comforting, homely drink; Falernian wine comes from the heart of the Italian countryside (in Campania, south of Rome). But *vino* also suggests foreign plonk, not wine suitable for a real celebration. There is really no exact equivalent for Falernian in modern Anglo-American culture: the wines we tend to think of as grand or celebratory are associated with non–English speaking countries. Wine does not belong to us, as it did to the Romans; wine reminds us not of our own heritage, but of somebody else's. Green's method of translation reminds us that we can never understand the ancients without thinking about both their likeness and their difference from ourselves.

THERE ARE MANY MOMENTS in Green's Catullus, as in his previous translations, where he imports markedly colloquial language, even when there is no obvious slang in the original. In poem 43, *salve*—the standard Latin greeting—becomes "Hi there"; in poem 104, Green adds a "no way," which corresponds to no words in the original (although it may help to convey an emphatic refusal); in poem 46, when Catullus's mind is *praetrepitans* ("trembling in anticipation"), Green says, "My heart's in a tizzy," like a frazzled Monty Python housewife. *Di magni* in poem 53, literally "Great gods!" becomes the Bridget Jones–ism, "oh my god." Sometimes the language seems to come from the 1960s: "A really dishy/wife," "neat girl," and "shack up" all suggest that the promiscuous sexual antics of Republican Rome might have something in common with Swinging London. But there is also the Yorkshire burr of "t'other" in poem 57, while at the start of poem 8, the speaker admonishes himself in the fruity tone of an Etonian ex-army officer: "Wretched Catullus, stop this stupid tomfool stuff." Often the language is modern American ("jack off," "prick," "cute," "asshole," "dumbass," "fuckwits," "a backwoods hick," "hotshots"). Sometimes this Catullus sounds like a British schoolboy from a bygone age, who indulges in "rogering" and "expensive blowouts." The result is a voice that veers about between wildly different registers, and whose language is already dated, sometimes extremely so.

In two essential ways, however, Green's promiscuous use of language is faithful to Catullus's Latin, in its fashion. First, Catullus himself was not a poet who

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stuck to a single linguistic register. He brought into written Latin the spoken voices of the bedroom and the street. He is full of colloquialisms, slang, dirty words, puns, neologisms, diminutives, and jokes. He shifts with unnerving speed between elevated poetic language and conversational Latin. He was criticized in his own time for stylistic originality: Catullus and his circle were known to Cicero by the derogatory nicknames "New Poets" or "Innovators" (*poetae novi* or *neoterics*). A translation that presents Catullus as a poet with a bland, unvarying style and a limited vocabulary will be highly misleading.

Secondly, and more importantly, Green's mode of translation draws attention to itself. Nobody could mistake any poem from Green's Catullus—even the most successful of them—for an original composition by an Anglophone poet. This might be seen as a defect: Heidegger said that "the good translator disappears from view, even while preserving the text." But constant reminders of the translator's presence may allow for greater fidelity, of a kind, to the original. It is never possible to forget, reading Green, that Catullus wrote in Latin, and that our own culture is very different from that of ancient Rome.

Green's wide lexicon constantly makes the reader ask questions about the relationship of Anglo-American and Roman linguistic culture. English has a far larger lexicon than extant classical Latin: the most recent *Oxford English Dictionary* includes over 600,000 words, whereas the *Oxford Latin Dictionary* has entries for only 40,000. But it does not necessarily follow that English speakers can express fifteen times the number of thoughts and emotions that were available to the Romans. It may be that Latin speakers, like Lewis Carroll's Humpty Dumpty, made each of their words work harder than most English words do.

Puella, for instance—an essential word both in Catullus and in later Latin elegists such as Propertius and Ovid—is the ordinary word for "girl." But it is also used for the poet's mistress or girlfriend (words with very different connotations in English), and for an unmarried but sexually active young woman. Catullus uses the movingly stark but resonant phrase in the middle of poem eight: *uale, puella*. One could translate it, as Guy Lee does, "Goodbye, girl." This has a nice pop-song simplicity. But the neutrality of "girl" misses the suggestion that Catullus is saying goodbye to the woman he loves, his sexual partner and beloved; it misses, too, the implication that this is an attempted farewell to the seductions of femininity. Moreover, *puella* may have much less positive connotations. Catullus could be saying, "Farewell, darling," but he could also be saying, "Good riddance, whore." Green gives us a gentle dismissal: "So goodbye, sweetheart." But elsewhere in Green, a *puella defututa* is "that fucked-out little scrubber." Green's translation rightly reminds us that the connotations of *puella* run all the way from "sweetheart" to "scrubber."

Green is always extremely anxious to remain true to the technical qualities of his original, re-producing as closely as possible the Latin word-order, line-breaks, and rhythms. In Catullus, he sets himself a new and fascinating challenge: he tries to imitate in English all Catullus's meters—sapphics, hendecasyllabics, iambics, choliambics, even galliambics. He remarks that "the *only* previous complete English-language version of Catullus with every poem done, as near as could be managed, in an equivalent of its original meter was that by Robinson Ellis (1871)." The word "equivalent" is always tricky in the context of translation. Lee uses a nine-syllable line quite successfully as an "equivalent" of Catullus's eleven-syllable hendecasyllabics. But Green is more ambitious: his hendecasyllabics, for example, are intended to re-produce the precise rhythmic pattern of Catullus's meter, although substituting English stress for Latin quantity.

Green is right to insist that the form of poetry is an essential part of its meaning. In choosing to write hendecasyllabics—his favorite "polymetric" verse form—Catullus was re-inventing an obscure Greek lyric meter that may not have been used in Latin before. Catullus's use of an unfamiliar meter helped to make his voice sound startlingly new. Hendecasyllabics seem to have what Green calls a "dancing, perky rhythm": the meter had been used for Attic drinking songs, and it reinforces Catullus's light, conversational tone. The choice of meter also signals Catullus's literary affiliations. Catullan hendecasyllabics are the rhythmical mirror image of sapphics. Catullus's favored meter, like his use of the name "Lesbia," hints that he will be a twisted Roman version of Sappho.

Green is not entirely successful in the technical feat he has undertaken. He relies heavily on various substitutions that Catullus allows himself only very rarely, such as the use of a ten—rather than eleven—syllable hendecasyllabic line. There are a lot of lines that scan properly only if one reads them with unnatural intonation. But, as Tennyson suggested in his own attempt to write Catullan hendecasyllabics, a poem "all composed in a metre of Catullus" is bound to risk metrical error, "like the skater on ice that hardly bears him."

No translation is ever perfect: *traduttore, traditore*. If Green sometimes fails, it is more astonishing that he succeeds as well as he does. Like Catullus himself, Green combines vast ambitions with a likeable boyish insoucience. His energetic and bracingly intelligent translation will bring new readers to Catullus, and will bring a new Catullus to readers who thought they knew him. It deserves, as Catullus said of his own book, to "outlast at least *one* generation!" ■

The Hanging of Judas in Reverse Order

For years I hovered at my own threshold.

An ivy-twined trunk.

Here in the garden: shade's column of cold air. High C hit at
Perfect pitch.

Love a plumb-line drop onto railroad tracks.

A waiting we never come back from.

And then silence. Quarry bottom. Fronds swaying silver silt.

This is the past, you say, lying deep as the moon's wake after
Lit cities roar by.

I know, I know.

ELLEN WEHLE

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TOKYO DIARIST

Singled Out

AFTER TOM CRUISE DECLARED his newfound love for Katie Holmes on "Oprah" and trashed Brooke Shields on the "Today" show, many Americans began to question the megastar's sanity. I personally suspected something was amiss after Cruise's pitch-perfect performance as a sexist self-help guru in the 1999 movie *Magnolia*. Cruise's character conducts seminars instructing men in the niceties of manipulating women; he begins his lecture with, "Respect the cock." The entire film dabbles in the absurd, but, when I was in Japan last winter, I discovered the concept of a seduction school isn't pure fiction. Whereas, in the 1980s, Japanese women who hadn't tied the knot at 25 were considered old maids, today many women are choosing to marry in their thirties, if at all. One result of their selectiveness is that the ranks of single men have also increased, spawning an unusual industry: institutions dedicated to helping guys land dates.

WHEN I STOPPED BY ONE OF THESE establishments with a translator, I prepared myself to be deluged by machismo. The Nagoya Bridegroom School director, Kiyoharu Ohashi, even struck me as a ringer for Cruise, with his compact frame and chic haircut. Though I couldn't make out a word of the five-part outline he had put up on a white board, I figured it was a rough translation of *Magnolia*'s fictional "Seduce and Destroy" lecture. I settled into my seat, prepared to be disgusted.

I MIGHT HAVE REALIZED WHAT A DIFFERENT experience awaited me if I had noticed that the Nagoya enterprise was actually a nonprofit. Ohashi, a former CPA, had started the school to do his part to boost Japan's ever dwindling birth rate (at 1.29, it is among the lowest in the world). If this man had a prototype, it wasn't a misogynistic TV personality, but rather a Jewish mother. "Get out there," he urged his students, most of whom were in their late thirties. "Even if you feel awkward. You are at an age where you don't have much time left to find a partner." Ohashi recently authored a book to help his pupils, *Skills to Get Married for Men Who Don't Have Girlfriends*. An engineer in the audience said he would be grateful for a study guide. "You are touching on things I don't feel comfortable with," he confided. "I don't know if I talk about the right things. I don't know if I wear the right clothes." There was a pause. "I guess I don't know how to make people like me."

I FELT LIKE I HAD STUMBLED INTO A church confessional. The fact that it was a *guy* laying out his insecurities, in the most unlikely of venues, made it all the more embarrassing. Popular culture has essentially branded the "Will anyone love me?" lament as the provenance of women. Consider "Cathy," the character in the eponymous cartoon strip who spent the past 28 years trying to find Mr. Right (she finally walked down the aisle last February). Or the '80s TV hit "thirtysomething": The two single female protagonists, Ellyn and Melissa, obsessively ruminated over their odds of meeting an eligible man, while their male counterpart, Gary, generally balked at the first sign of commitment. To be sure, the more modern fictional versions of the female singleton—the "Sex and the City" quartet, for example—demonstrated a little more verve and a little less neurosis. But overshadowing virtually every storyline was the fact that a woman's fecundity has a sell-by date.

JAPAN HAS ITS OWN FIXATION WITH single women. One of the runaway bestsellers of recent years was *Howl of the Loser Dogs*, which detailed the frustrations of single thirtysomething writer Junko Sakai with the Japanese dating scene. In addition to spawning a TV miniseries, *Loser Dog* entered the lexicon as shorthand for older, unmarried women. Their numbers are burgeoning: In 1970, only 18 percent of Japanese women aged 25 to 29 were single; today, over half are. Part of what's driving these women away from marriage is that they don't want to replicate the experiences of their mothers, who were expected to stop working and dedicate themselves entirely to their families once they married. For the most part, this is still the expectation in Japan, a country that has few day care and nanny options. "Maybe I'm a loser dog," a young female student at the ultra-elite University of Tokyo told me. "I think it's good to be married and to have children. But I don't think it's a necessity. I want to work in a good job. I want to enjoy myself."

THE STUDENT'S COMMENT—AND SAKAI'S book—illustrate why the focus tends to be on unmarried women rather than men: They are generally more open about the uncertainties and fears—as well as more conscious of the tradeoffs—that come with being unattached. But a drop in marriage affects both genders, and the afternoon I spent at the Bridegroom School drove home how hard being alone can be for men, too. Even the timing of the class spoke to their desperation. Ohashi had scheduled the lecture for a Sunday afternoon, in part because that was the sole day the men had off from work. It wasn't an ordinary Sunday, though: It was the day after Christmas, which functions as a quasi–Valentine's Day in Japan. These men had, obviously, spent the romantic holiday alone.

AND OHASHI STRONGLY SUGGESTED TO me that, despite his pointers on conversation techniques and sartorial savvy, most of his students would remain on their own: He estimated that, if current trends held, about one-quarter of Japanese men in their thirties will never marry. Ohashi had given me permission to ask the students questions after class, but I was oddly paralyzed. The men I'd been prepared to view as macho hustlers just sounded insecure and lonely. In fact, they weren't so different from the single women who are so prominently showcased in every corner of pop culture. But it's socially unacceptable for men to voice their vulnerability—which makes it more difficult for them to grapple with the same emotional fears that single women have legitimized. The men and I respected this taboo: I didn't go into reporter mode, and they didn't encourage it. After a round of formal bows and tight smiles, we walked out into the frigid evening and didn't exchange a word.

ALEXANDRA STARR

Alexandra Starr was a Japan Society media fellow in 2004–2005.

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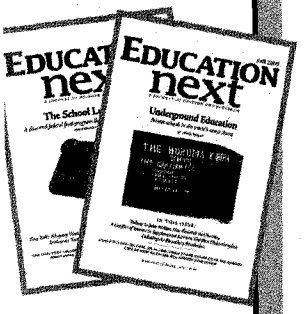

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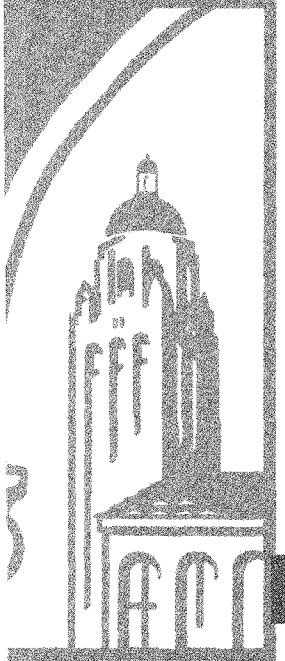

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In the new issue of *Education Next*

"Acting White"

The social price paid by the best and brightest minority students

"Acting white" was once a label used by scholars to characterize academically inclined, but allegedly snobbish, minority students who were shunned by their peers. Now that it has entered the national consciousness—perhaps even its conscience—the term has become a slippery, contentious phrase whose meaning is open to many interpretations. What I mean by acting white is a set of social interactions in which minority adolescents who get good grades in school enjoy less social popularity among their same-race peers than white students who do equally well academically. For the small percentage of black and Hispanic students who attend private school, however, I find no evidence of a trade-off between popularity and achievement. Most studies of academic achievement find little or no benefit of attending a private school for whites but quite large benefits for African Americans. It may be that blacks attending private schools have quite a different peer group.

—Roland G. Fryer

Advanced Placement Turns Fifty

An elite program designed in anticipation of cold war needs

The idea for the Advanced Placement (AP) exam emerged from elite colleges, prep schools, and high schools as a way of accelerating and fortifying the education of the nation's future leaders in anticipation of cold war national-security demands. A half-century later, the cold war over, the AP program is still with us. The essentials remain the same: high-school students take college-level courses, taught by teachers in their schools, and then take exams designed by the College Board to show they have mastered the subject at college-level proficiency. But despite the vast expansion of the number of students taking AP courses and exams since 1956, it is still the case that less than 10 percent of all those entering high school ever pass an AP examination.

—Andrew Mollison

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